

SENATE.

WEDNESDAY, December 18, 1912.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. LODGE and by unanimous consent, the further reading was dispensed with and the Journal was approved.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore (Mr. GALLINGER) laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, an authentic copy of the certificate of final ascertainment of the electors for President and Vice President appointed in the State of Kansas at the election held therein on November 5, 1912, which was ordered to be filed.

ANNUAL REPORT OF THE RECLAMATION SERVICE (H. DOC. NO. 948).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Interior, transmitting, pursuant to law, the Eleventh Annual Report of the Reclamation Service, which was referred to the Committee on Irrigation and Reclamation of Arid Lands and ordered to be printed.

JOINT COMMITTEE ON INQUIRY INTO PARCEL POST.

The PRESIDENT pro tempore. The Chair announces the appointment of Mr. TOWNSEND to fill the vacancy occasioned by the resignation of Mr. BRIGGS on the Joint Committee to make Further Inquiry into the Subject of Parcel Post, so that the Senate members will now be Mr. BRISTOW, Mr. BRYAN, and Mr. TOWNSEND.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House insists upon its amendments to the bill (S. 3947) to provide for a bridge across Snake River, in Jackson Hole, Wyo., disagreed to by the Senate, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SMITH of Texas, Mr. RUCKER of Colorado, and Mr. KINKAID of Nebraska, managers at the conference on the part of the House.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills, and they were thereupon signed by the President pro tempore:

S. 3974. An act to increase the limit of cost of the United States public building at Denver, Colo.; and

S. 6899. An act increasing the limit of cost for the erection and completion of a public building in the city of Richford, State of Vermont.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented the memorial of Capt. Joseph B. Sanborn and 21 other citizens of Fremont, N. H., praying for the adoption of an amendment to the Constitution prohibiting a third term for President and Vice President of the United States, which was referred to the Committee on the Judiciary.

Mr. CULLOM presented petitions of the congregations of the Presbyterian Church of Baldwin; the Congregational Church of Pittsfield; the Methodist Episcopal Church of Farina; the Methodist Episcopal Church of Pittsfield; the Congregational Church of Payson; the Methodist Church of Essex; the First Christian Church of Galesburg; of sundry churches of Clayton; of the Baptist Church of Kinderhook; the Methodist Episcopal Church of Kinderhook; the Presbyterian Church of Clayton; the Swedish Methodist Church, of Galesburg; of sundry churches of Raritan; of the Methodist, Congregational, and Lutheran Churches of Mendon; of sundry churches of Charleston; of the Ministerial Association of Peoria; of the Ministers' Association of Lawrence County; of the Swedish Evangelical Mission Church, of Galesburg; of the First Baptist Sunday school of Jerseyville; of the Bible school of the Christian Church of Clayton; of the Methodist Episcopal Sunday school of Savanna; of the Epworth League of the Church of Clayton; of the Woman's Christian Temperance Unions of Elgin and Pittsfield; of the Olivet Public Welfare Club, of Chicago; and of sundry citizens of Streator and Mokena, all in the State of Illinois, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented memorials of Local Union No. 149, International Union of the United Brewery Workmen, of Joliet; of the Chicago Engraving Co.; of the Holt Caterpillar Co., of Peoria; of E. G. Isch & Co., of Peoria; of the Drill & Seeder Co., of Peoria; of the Herschel Manufacturing Co., of Peoria; of Suffern, Hunt & Co., of Decatur; of the Criterion Publishing

Co., of Chicago; and of sundry citizens of Peoria and Chicago, all in the State of Illinois, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of the Woman's Christian Temperance Unions of Bethel, Galesburg, Barry, and Belflower; of the congregations of the Protestant churches of Galena; of the First Congregational Church of Elgin; the First Presbyterian Church of Geneseo; the First Congregational Church of Sterling; of members of the New Hebron circuit, Lower Wabash Conference of the United Brethren Church, of New Hebron; of sundry citizens of Plainfield, Champaign, Galena, and Springfield; and of the men's Bible class of the First Methodist Episcopal Church of Grant Park, all in the State of Illinois, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. BROWN presented a petition of members of the Omaha Ministerial Union, representing 60 churches in Nebraska, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. WARREN presented a memorial of Local Union No. 273, United Brewery Workmen, of Sheridan, Wyo., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. McLEAN presented petitions of Whigville Grange, No. 48, of Bristol; of Local Grange No. 29, of Meriden; of Local Grange No. 138, of North Stonington; of Local Grange No. 149, of Easton; of Local Grange No. 45, of Harwinton; of Hillstown Grange, No. 87, of Hartford; of Local Grange No. 144, of Prospect; and of Local Grange No. 49, of Farmington, all of the Patrons of Husbandry, in the State of Connecticut, praying for the enactment of legislation providing for the establishment of agricultural extension departments in connection with the agricultural colleges in the several States, which were ordered to lie on the table.

Mr. JOHNSON of Maine presented a petition of sundry citizens of Columbia, Me., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

He also presented memorials of sundry citizens of Portland, Glenwood, Frankfort, Waterville, and Richmond, in the State of Maine; of Washington, D. C.; Cincinnati, Ohio; St. Louis, Mo.; Girard, Ala.; and Rochester, N. Y., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. CRAWFORD (for Mr. GAMBLE) presented sundry papers in support of the bill (S. 7467) for the relief of George H. Grace, which were referred to the Committee on Post Offices and Post Roads.

REPORTS OF COMMITTEES.

Mr. WETMORE, from the Committee on Naval Affairs, to which was referred the bill (S. 7169) to transfer Capt. Frank E. Evans from the retired to the active list of the Marine Corps, reported it without amendment and submitted a report (No. 1077) thereon.

Mr. WARREN, from the Committee on Appropriations, to which was referred the bill (S. 7493) for the relief of Thomas G. Running, asked to be discharged from its further consideration and that it be referred to the Committee on Claims, which was agreed to.

HENRY E. RHOADES.

Mr. LODGE. From the Committee on Naval Affairs I report back adversely the bill (S. 3027) placing Henry E. Rhoades, assistant engineer, United States Navy, on the retired list with an advanced rank. I ask to have the accompanying letters from the Secretary of the Navy printed in the Record, and then the bill may be indefinitely postponed.

There being no objection, the matter referred to was ordered to be printed in the Record, as follows:

DEPARTMENT OF THE NAVY,
Washington, August 4, 1911.

The CHAIRMAN COMMITTEE ON NAVAL AFFAIRS,
United States Senate.

MY DEAR SENATOR: In reply to that portion of the committee's letter of July 15, 1911, requesting the department's opinion on bill (S. 3027) placing Henry E. Rhoades, assistant engineer, United States Navy, on the retired list with an advanced rank, your attention is respectfully invited to the department's letter of May 24, 1911, to the committee, giving its opinion and recommendation on a bill (S. 2028) of May 4, 1911, for the relief of Henry E. Rhoades, a retired officer of the Engineer Corps, United States Navy. For reasons fully set forth therein it is recommended that the present bill (S. 3027) be not given favorable consideration.

A copy of the department's letter referred to is herewith inclosed.

Faithfully, yours,

BRECKMAN WINTHROP,
Acting Secretary of the Navy.

MAY 24, 1911.

The CHAIRMAN COMMITTEE ON NAVAL AFFAIRS.

United States Senate.

MY DEAR SENATOR: Referring to your letter dated May 5, 1911, inclosing a bill (S. 2028) for the relief of Henry E. Rhoades, a retired officer of the Engineer Corps, United States Navy, and requesting the department's opinion thereon, I have the honor to inform you that Mr. Rhoades was appointed an acting third assistant engineer in the Navy February 11, 1865, and was honorably discharged October 3, 1865; he was reappointed in the same grade December 19, 1866, and was mustered out April 22, 1869. Subsequently, on February 25, 1871, he was appointed in the Regular Navy.

After a cruise in the Arctic on the U. S. S. *Junata* Mr. Rhoades appeared before a naval retiring board on November 20, 1874, and the medical members thereof found him subject to frequent epileptic attacks, accompanied with neuralgia of the chest and palpitation of the heart, shown to have existed prior to his entry in the Navy, and therefore not originating in the line of duty. The full board found that his incapacity did not originate in the line of duty or from any incident of the service. In pursuance of this finding of the board, it was optional with the President, under the provisions of the act of August 3, 1861 (12 Stat., 291, sec. 23), either to retire Mr. Rhoades on furlough pay or wholly to retire him from the service; and the then President, exercising his discretion, directed, under date of December 26, 1874, that Mr. Rhoades be retired on furlough pay.

Under date of January 28, 1893, the then Secretary of the Navy, Mr. Tracy, in reporting to the committee upon a bill (H. R. 980, Fifty-second Congress, first session) authorizing the name of Mr. Rhoades to be placed upon the list of officers who have been retired on account of incapacity of service origin, as provided in section 1588 of the Revised Statutes, stated that the department perceived no objection to the proposed legislation. At the same time the committee was furnished with a copy of the record of proceedings of the retiring board before which Mr. Rhoades was examined in November, 1874. Subsequently, however, under date of April 21, 1896, Mr. Secretary Herbert, and on April 1, 1897, Mr. Secretary Long, in reporting upon bills similar to H. R. 980, viz, H. R. 5192, Fifty-fourth Congress, first session, and S. 1304, Fifty-fifth Congress, first session, did not recommend favorable action thereon.

Following the department's policy in cases of this character, adopted particularly in view of the provisions of the act of August 5, 1882, that "hereafter there shall be no promotion or increase of pay in the retired list of the Navy, but the rank and pay of officers on the retired list shall be the same that they are when such officers shall be retired," the then pending measure was not commended to the committee's favorable consideration, the more especially as it provided that the increase of pay authorized therein should take effect from the date of the beneficiary's retirement, nearly 30 years before. The foregoing recommendation was made on April 1, 1904, and again reiterated February 1, 1906.

It might be stated that on a number of occasions favorable reports were made by committees of Congress on bills for the transfer of Mr. Rhoades from the half-pay to the three-quarters-pay list of retired officers, on the theory, apparently, that the finding of the retiring board that his disability was not of service origin was erroneous; and that when the measure by which he was finally so transferred, viz, H. R. 9297, Fifty-ninth Congress, first session, was under consideration in the House of Representatives a motion to recommit it for an amendment providing that the increased retired pay take effect from the date of the passage of the bill (instead of from the date of the officer's retirement) was defeated by a large majority. (CONGRESSIONAL RECORD, May 18, 1906, p. 7298.)

That bill became a law on May 26, 1906, and on June 2, 1906, Mr. Rhoades was transferred from the half-pay to the 75 per cent pay list of retired officers under the provisions of section 1588 of the Revised Statutes, to take effect from December 30, 1874, the date from which he was originally transferred to the retired list. Under this authority Assistant Engineer Rhoades received the sum of \$13,695.72.

After the passage of the act of June 29, 1906, increasing the rank and pay of certain officers "retired on account of wounds or disability incident to the service," etc. (34 Stat., 554), Mr. Rhoades was nominated to and confirmed by the Senate to receive the rank of the next higher grade, viz, that of passed assistant engineer with the rank of lieutenant.

In a decision rendered by the Comptroller of the Treasury on September 20, 1907 (14 Comp. Dec., 162), in a similar case, that of Lieut. Jerome E. Morse, it was held that upon the passage of a special act of Congress approved June 10, 1902, transferring Lieut. Morse from the 50 to the 75 per cent retired pay list, "such officer thereby became an officer retired on account of disability originating in the line of duty from the date of the passage of said act, and, being otherwise qualified within the act of June 29, 1906, possessed the qualifications which enable the President and Senate, under the act of June 29, 1906, to advance him in rank and pay on the retired list one grade above that actually held by him at the time of retirement, and is entitled to the pay of such higher grade from June 29, 1906."

On March 13, 1909, upon request of this department, the Attorney General rendered an opinion holding that a special act of Congress, approved January 5, 1909, transferring Assistant Engineer Jabez Burchard, United States Navy, from the half-pay list to the 75 per cent pay list of retired officers "to take effect from the date of his retirement," did not operate to change the officer's original cause of retirement, and that Mr. Burchard was not therefore entitled to the rank and pay of the next higher grade under the act of June 29, 1906, he having been retired for disability not incident to the service.

This opinion of the Attorney General was applied by the Comptroller of the Treasury to the case of Lieut. Jerome E. Morse, who, because of a special act of Congress transferring him from the half-pay list to the 75 per cent pay list, as hereinbefore referred to, had been nominated to and confirmed by the Senate to receive the rank and retired pay of the next higher grade, under the act of June 29, 1906. The comptroller reopened and reversed his prior decision, stating in explanation thereof that the opinion in the Burchard case "is accepted as the proper construction of the law and will be followed in this and similar cases."

In view of the foregoing considerations Mr. Rhoades was informed by the department on May 27, 1909, that it clearly appeared that he was not entitled to the benefits of the act of June 29, 1906, and that his erroneous nomination and confirmation thereunder did not therefore affect his status on the retired list, which was then, as it had been prior thereto, that of an assistant engineer with the rank of lieutenant (junior grade).

It will be observed that the Attorney General held that the special act of Congress transferring Assistant Engineer Burchard "from the half-pay list to the 75 per cent pay list of retired officers, under sec-

tion 1588 of the Revised Statutes of the United States, to take effect from the date of his retirement," did not make him an officer of the Navy who had heretofore been "retired on account of wounds or disabilities incident to the service," the fact being, as the record shows, that, although inadvertently or erroneously, Mr. Burchard was definitely retired for a physical disability which was not due to an incident of the service." The case of Mr. Rhoades was similar to that of Mr. Burchard.

Under the law then and now existing, namely, the act of June 29, 1906, Mr. Rhoades was not entitled to advancement on the retired list to the rank and pay of the next higher grade, i. e., to the rank and pay of a passed assistant engineer on the retired list with the rank of lieutenant.

Notwithstanding that Mr. Rhoades does not come within the terms of the existing law upon the subject, as just stated, the bill under consideration proposes not only to give him what the present law itself does not now provide, but also aims to secure for him, though retired for disability not incident to the service, advantages which Congress has not deemed it proper to provide for officers retired for disability which was incident to the service, a bill for the latter during the last session (H. R. 31598, 61st Cong., 3d sess.) having failed of enactment.

Mr. Rhoades has received every proper consideration, both from the department and from Congress, even generous treatment when it is recalled that he was (1) retained on the retired list on furlough pay in 1874, when, in the President's discretion, he might have been wholly retired, i. e., separated completely from the service; and (2) that he was, by special act of Congress of May 18, 1906, transferred from the furlough or half-pay list to the 75 per cent pay list to take effect from the date of his retirement 32 years before, whereby he received nearly \$14,000 from the Government and a continuing substantial increase of pay.

In view of all the foregoing facts and of the additional fact that this measure comes within that class of special legislation the enactment of which is not thought desirable, it is recommended that the committee do not take favorable action upon the bill here under consideration.

Faithfully, yours,

Secretary.

The PRESIDENT pro tempore. Without objection, the bill will be indefinitely postponed.

LANDS OF FORT ASSINNIBOINE MILITARY RESERVATION.

Mr. DIXON. From the Committee on Public Lands I report back favorably with amendments the bill (S. 5138) authorizing the Secretary of the Interior to survey the lands of the abandoned Fort Assiniboine Military Reservation and open the same to settlement, and I submit a report (No. 1075) thereon. On account of the somewhat urgent situation I should like to ask immediate consideration. The bill is accompanied by a unanimous report from the committee.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. WORKS. Mr. President, I did not rise to object, but I call the attention of the Senator from Montana to the fact that there seems to be a mistake in the bill as I heard it read.

Mr. DIXON. This is the original bill. The amendments will now be read.

Mr. WORKS. The bill should read "\$1.25 an acre."

Mr. DIXON. The amendments which the committee have reported will now be read.

Mr. GRONNA. Mr. President, I do not rise to object to the consideration of the bill, but I should like some information from the author of the bill. Is it a local measure affecting only the State of Montana or is it general in its scope?

Mr. DIXON. It merely opens the abandoned Fort Assiniboine Military Reservation to settlement under the usual terms.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The amendments were, on page 2, line 13, before the word "dollars," to strike out "two" and insert "one"; on page 2, line 14, before the word "cents," to strike out "fifty" and insert "twenty-five"; on page 2, line 15, before the word "cents," to strike out "fifty" and insert "twenty-five"; on page 2, line 16, before the word "cents," to strike out "fifty" and insert "twenty-five"; on page 2, line 17, to strike out the words "two dollars and fifty cents" and insert the words "one dollar and twenty-five cents"; on page 2, strike out line 24, and on page 3, to strike out lines 1 and 2 up to and including the word "two"; on page 3, after the word "Montana," in line 22, to strike out the period and insert a comma and the following words, "upon the payment by the State of Montana of the sum of \$2.50 per acre," so as to make the bill read:

Be it enacted, etc. That the Secretary of the Interior is hereby authorized and directed to immediately cause to be surveyed all of the lands embraced within the limits of the abandoned Fort Assiniboine Military Reservation, in the State of Montana.

Sec. 2. That before said lands are opened to entry the Secretary of the Interior shall have said lands classified by an inspector or special agent of the Department of the Interior into two classes—first, agricultural lands; second, timber lands—and in making such classification all lands susceptible of cultivation that do not contain in excess of 75,000 feet of merchantable timber to the 40-acre tract shall be classified as agricultural lands, and all lands containing in excess of 75,000 feet of merchantable timber to the 40-acre tract shall be classified as timber lands.

SEC. 3. That when so classified, all of said lands classed as agricultural land shall be opened to settlement and entry under the homestead laws of the United States: *Provided, however*, That the enlarged homestead act, approved February 19, 1909, shall not apply until six months after said land has been opened to settlement and entry as aforesaid.

SEC. 4. That entrymen upon said lands shall, in addition to the regular land-office fees, pay the sum of \$1.25 per acre for said land, such payments to be made as follows: Twenty-five cents per acre at the time of making entry and 25 cents per acre each and every year thereafter until the full sum of \$1.25 per acre shall have been paid. In case any entryman fails to make annual payments, or any of them when due, all right in and to the lands covered by his entry shall cease; and any payments theretofore made shall be forfeited and the entry canceled, and the land shall be again subject to entry under the provisions of the homestead law at the fixed price thereof: *Provided, however*, That the commutation provision of the general homestead law shall be applicable to all persons making homestead entry on said land under the provisions of this act, save and excepting entries made hereunder in accordance with the provisions of the enlarged homestead act, approved February 19, 1909, which shall not be subject to commutation.

SEC. 5. That this act shall not apply to an area of 640 acres embracing the Government buildings at Fort Assiniboine.

SEC. 6. That if, within five years from the date of the approval of this act, the State of Montana shall, by act of its legislative assembly, agree to establish and maintain any agricultural, manual-training, or other educational or public institution at the present site of Fort Assiniboine, then, in that event, the President of the United States is authorized and directed to transfer, grant, and set over its right, title, and interest of, in, and to the said 640 acres of land hereby reserved and embracing the buildings at Fort Assiniboine to the State of Montana, upon the payment by the State of Montana of the sum of \$2.50 per acre.

SEC. 7. That sections 16 and 36 of the land in each township within said abandoned Fort Assiniboine Military Reservation shall not be subject to entry, but shall be reserved for the use of the common schools of the State of Montana, and are hereby granted to the State of Montana.

SEC. 8. That the lands shall be opened to settlement and entry by proclamation of the President, which proclamation shall prescribe the manner in which the lands may be settled upon, occupied, and entered by persons entitled to make entry thereon; and no person shall be permitted to settle upon, occupy, or enter any of said land except as prescribed in said proclamation.

SEC. 9. That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$20,000, or so much thereof as may be necessary, for the survey and classification of said lands and for the expenses incident to their opening to settlement and entry.

The amendments were agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

LANDS RESERVED FOR RESERVOIR PURPOSES.

Mr. NELSON. From the Committee on Public Lands I report back favorably, with an amendment, the bill (S. 7448) restoring to the public domain certain lands heretofore reserved for reservoir purposes at the headwaters of the Mississippi River and its tributaries, and I submit a report (No. 1076) thereon. I ask for the present consideration of the bill.

The PRESIDENT pro tempore. The bill will be read for the information of the Senate.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The amendment was, on page 2, line 11, after the word "law," before the period, to insert a comma and the following words: "for the period of 90 days following the time fixed hereunder for the restoration of the lands," so as to make the bill read:

Be it enacted, etc., That there is hereby restored to the public domain, subject to the easement provided for in section 2 hereof, any and all lands hitherto reserved by Executive order in connection with the construction, maintenance, and operation of reservoirs at the headwaters of the Mississippi River and its tributaries the restoration of which the Secretary of War has recommended or may hereafter recommend to the Secretary of the Interior.

SEC. 2. That the lands hereby restored shall forever be and remain subject to the right of the United States to overflow the same or any part thereof by such reservoirs as now exist or may hereafter be constructed upon the headwaters of the Mississippi River, and all patents issued for the lands hereby restored shall expressly reserve to the United States such right of overflow.

SEC. 3. That the time when such restoration shall take effect as to any of such lands shall be prescribed by the Secretary of the Interior; and in all cases where actual settlement has been made on any of said lands prior to January 1, 1912, and improvements made the said settlers shall have a preferred and prior right to enter and file on said lands under the homestead law for the period of 90 days following the time fixed hereunder for the restoration of the lands.

SEC. 4. That no rights of any kind, except as specified in the foregoing section, shall attach by reason of settlement or squatting upon any of the lands hereby restored to entry before the hour on which such lands shall be subject to homestead entry at the several land offices, and until said lands are opened for settlement no person shall enter upon and occupy the same except in the cases mentioned in the foregoing section, and any person violating this provision shall never be permitted to enter any of said lands or acquire any title thereto.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. CULLOM:

A bill (S. 7798) granting an increase of pension to Alfred J. Adair (with accompanying papers); and

A bill (S. 7799) granting a pension to Eliza Fosha (with accompanying papers); to the Committee on Pensions.

By Mr. MASSEY:

A bill (S. 7800) for the relief of Fred E. Jackson (with accompanying paper); to the Committee on Claims.

By Mr. SANDERS:

A bill (S. 7801) for the relief of George T. Larkin; to the Committee on Claims.

By Mr. PENROSE:

A bill (S. 7802) to amend section 103 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911; to the Committee on the Judiciary.

A bill (S. 7803) granting a pension to William F. Woolsey (with accompanying papers);

A bill (S. 7804) granting an increase of pension to Jennie M. Metz (with accompanying papers); and

A bill (S. 7805) granting an increase of pension to Delphine R. Burritt (with accompanying paper); to the Committee on Pensions.

By Mr. BORAH:

A bill (S. 7806) granting an increase of pension to James M. Wells (with accompanying papers); to the Committee on Pensions.

By Mr. CHAMBERLAIN:

A bill (S. 7807) granting a pension to Ellen Barrett (with accompanying papers); and

A bill (S. 7808) granting an increase of pension to Ornan F. Hibbard (with accompanying papers); to the Committee on Pensions.

By Mr. DU PONT:

A bill (S. 7809) for the relief of the Virginia Military Institute, of Lexington, Va.; to the Committee on Claims.

By Mr. CURTIS:

A bill (S. 7810) to correct the military record of Eli Lewis; and A bill (S. 7811) for the relief of Albert H. Dooley (with accompanying papers); to the Committee on Military Affairs.

A bill (S. 7812) granting a pension to Mary R. Mayhall;

A bill (S. 7813) granting an increase of pension to William H. Ruckle;

A bill (S. 7814) granting an increase of pension to Luke Morrisey (with accompanying paper);

A bill (S. 7815) granting an increase of pension to Allen Brown (with accompanying papers);

A bill (S. 7816) granting a pension to Elizabeth Davis (with accompanying papers);

A bill (S. 7817) granting an increase of pension to William A. Douglass (with accompanying papers);

A bill (S. 7818) granting an increase of pension to George B. Olney (with accompanying paper);

A bill (S. 7819) granting a pension to Elizabeth U. Burson (with accompanying papers); and

A bill (S. 7820) granting an increase of pension to Jefferson Hurst (with accompanying papers); to the Committee on Pensions.

By Mr. BRISTOW:

A bill (S. 7821) to provide for a nominating election for postmasters; to the Committee on Post Offices and Post Roads.

By Mr. BRANDEGEE:

A bill (S. 7822) granting an increase of pension to Lillie D. Thompson; to the Committee on Pensions.

By Mr. CHILTON:

A bill (S. 7823) granting an increase of pension to Mary E. Workman; to the Committee on Pensions.

By Mr. CHILTON (for Mr. WATSON):

A bill (S. 7824) granting an increase of pension to Oakaley Randall (with accompanying papers); and

A bill (S. 7825) granting a pension to William R. Swearingen (with accompanying papers); to the Committee on Pensions.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. MYERS submitted an amendment proposing to appropriate \$20,000 for support and civilization of the Indians at the Blackfeet Agency, Mont., etc., intended to be proposed by him to the Indian appropriation bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

He also submitted an amendment proposing to appropriate \$250,000 to encourage industry among the Indians and to aid them in the culture of fruits, grains, and other crops, etc., intended to be proposed by him to the Indian appropriation

bill, which was referred to the Committee on Indian Affairs and ordered to be printed.

Mr. GUGGENHEIM submitted an amendment proposing to appropriate \$400,000 for the enlargement, extension, remodeling, or improvement of the post-office building under present limit at Denver, Colo., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

CLAIMS OF JOHN GLANZMAN AND OTHERS FOR EXTRA TIME ON PUBLIC BUILDINGS.

Mr. NEWLANDS. I desire to have printed as a public document a statement or memorandum, with accompanying documents and quotations, regarding certain claims for extra time of certain employees on public buildings, including John Glanzman, of Nevada, an amendment covering which claims was offered by me on the 17th day of December, 1912, to the omnibus bill, H. R. 19115, reported by the Committee on Claims.

The PRESIDENT pro tempore. Is there objection to the request made by the Senator from Nevada that the papers he sends to the desk be printed as a public document? The Chair hears none, and it is so ordered.

ORDER OF BUSINESS.

The PRESIDENT pro tempore. If there are no further concurrent or other resolutions the morning business is closed.

Mr. CULLOM. I desire to make a motion to-day for an executive session, but I understand that the Senator from Iowa [Mr. KENYON] is almost through with his speech, and I yield to him for that purpose. I observe that the Senator from Georgia [Mr. SMITH] has also given notice that he desires to speak this morning, and I will give way to him, too.

Mr. KENYON. Mr. President—

Mr. CRAWFORD. Is the morning business closed?

The PRESIDENT pro tempore. The morning business is closed. The Senator will be recognized for morning business.

Mr. CRAWFORD. No; I move to take up House bill 19115, the omnibus claims bill, so that it may maintain its place, and then I will yield to the Senator from Iowa.

The PRESIDENT pro tempore. The Senator from South Dakota moves that the Senate resume the consideration of the bill (H. R. 19115) making appropriation for payment of certain claims in accordance with findings of the Court of Claims, reported under the provisions of the acts approved March 3, 1883, and March 3, 1887, and commonly known as the Bowman and the Tucker Acts. Without objection, it is agreed to.

Mr. CRAWFORD. I will yield to the Senator from Iowa to conclude his remarks.

Mr. SMITH of Georgia. Mr. President, I desire to occupy the attention of the Senate briefly this morning under the notice I have given, for the purpose of calling to the attention of the Senate—

The PRESIDENT pro tempore. The Chair had recognized the Senator from Iowa. Does the Senator from Iowa yield to the Senator from Georgia?

Mr. KENYON. For a speech or argument?

Mr. SMITH of Georgia. Yes.

Mr. KENYON. I will say to the Senator from Georgia I desire to finish the remarks I was making at the close of the morning hour yesterday.

Mr. SMITH of Georgia. Then I would be glad to yield to the Senator from Iowa, but give notice that after he concludes I will follow him.

The PRESIDENT pro tempore. That order will be made. The Chair lays before the Senate the bill called up by the Senator from Iowa.

INTERSTATE SHIPMENT OF LIQUORS.

The Senate, as in Committee of the Whole, resumed consideration of the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases.

Mr. KENYON. Mr. President, on yesterday, to complete my argument by the close of the morning hour, I proceeded perhaps a little more rapidly than I otherwise would have done, but I think I made my position reasonably clear. I wish to devote just a few moments in closing to section 2 of this act, which is the committee amendment.

Section 2 of this act is the committee amendment. It is identical with the Wilson law, except in the present bill are found the words "and before delivery to the consignee." Otherwise there is no difference. This bill clearly states, by section 2, what was in fact the object and purpose of the framers of the Wilson bill. In the Rahrer case the court sustained the Wilson Act, rather destroying its effect, however, in the Rhodes case. There can be no reasonable doubt, from the reading of the interesting debates, as to the purpose in mind of Congress with

reference to the Wilson Act. Senator Wilson, the author thereof, said:

It is a bill to grant to the States what may be called a local option, to allow them to do as they please in regard to the liquor question.

They could have prohibition, high license, local option, or free liquor, as they please. It was the intention that each State should be free to determine its own policy in regard to the liquor traffic. If the State wanted prohibition, that was its business; if it wanted license, that was its business; if it wanted free liquor, that was its business. Senator Vest argued that the bill was a delegation of the power to the States to regulate interstate commerce, and asked this significant question:

Can the Congress of the United States delegate a constitutional power exclusively vested in it to any of the States?

The distinguished Senator Hoar said:

Mr. President, if this bill be not within the constitutional power of Congress, I think we must all agree that the condition of the American people in regard to this particular subject is more miserable than that of any other civilized nation on the face of the earth. I suppose there does not exist a community where men live together under law where the danger of permitting the unrestricted sale of intoxicating liquor is not recognized and guarded against by public authority.

Senator Edmunds, of Vermont, who had as profound regard for the Constitution as any other man, in discussing the bill, said:

Now, where is the line? The line is, I think, a line which the Supreme Court of the United States appears to have gone over—that when your act of transportation, your act of commerce among the States or from foreign nations has become complete and the word "among" no longer applies, and the commodity is in the State where its transportation is ended, and it is in the hands of its owner there, whether that owner be a citizen of one State or another makes no difference. It is then just like the commodity of the same nature, all the laws being equal, in the hands of the citizen of the State who made it there himself, the subject of State law; and that is what the Supreme Court of the United States within the next 20 years will come to.

This has proved prophetic, indeed, as the Supreme Court came to that proposition in a later case. Senator Edmunds continued:

The objection that has been made to this bill is that we are delegating it to a State.

That is an objection that has been raised as to the pending bill—

I deny the proposition. I say that by this bill, although its mere terminology is not what I would have adopted, but in substance it comes to the same thing, Congress is undertaking to regulate the traffic among the States of things by saying, "We employ the agency of the people through its legislative authority, the State of Missouri, for instance, to say whether it is wise to admit this thing in the community that is there from the State of Illinois or not." We say to the State of Vermont, "We employ you as the agent of Congress in the regulation of this traffic to determine whether the condition of things as to the state of public morals there will warrant that thing."

Congress, therefore, instead of delegating a power is exerting the same power in respect of internal commerce that it has always exerted in respect of external commerce, to authorize somebody to determine how and under what conditions this commerce, if you call it that, shall be carried on. Giving no preference to one State over another, not as a remitted or delegated authority but as the exertion of the power of Congress to regulate this traffic among the States, on the theory of the Supreme Court, it says to one body of people, "You may carry it into that State if our agents there think it right to admit it; you may not carry it into another if our agents there think it right to exclude it." So in whatever aspect you look at it, if the power to provide for the safety and regulate the transactions among men in the several States is in the States, as I think it is, it can not be touched at all; but on the strength of these decisions, and assuming it to be in Congress, we are exerting the very power which gentlemen say belongs to Congress exclusively in making an elastic regulation which is equal among all and applies to everybody as to the terms upon which this internal commerce shall be carried on.

It does not appear to me, therefore, that in any aspect of the case there ought to be any difficulty in our relieving the people of the United States, in each State according to its own local needs and necessities. If it be free liquor in Missouri, free liquor it is, Congress says; and if it be prohibition in Vermont, prohibition it is—equal everywhere, according to the adjustments that the needs of the societies in the various States require.

Senator Faulkner, of West Virginia, to whom I referred yesterday, offered the following amendment, showing that the debate ranged around the very question that was afterwards determined in the Rhodes case:

Strike out all after the enacting clause and insert: "That when fermented, distilled, or intoxicating liquids or liquors are transported or conveyed by a common carrier as an article of commerce from a State or Territory into another State or Territory, such fermented, distilled, or intoxicating liquids or liquors so transported or conveyed shall be considered as incorporated as a part of the common mass of property within such State or Territory and subject to its regulation, control, or taxation in the exercise of its police powers on delivery of the original package by the common carrier to the owner or consignee."

This amendment of Senator Faulkner's embodied exactly what the Supreme Court subsequently held in the Rhodes case, and this amendment was voted down by the Senate, showing that the construction subsequently put upon the Wilson Act in the Rhodes case was exactly what the Senate did not intend. It is claimed by opponents of this measure that section 2 is a delegation of power to the States to regulate interstate com-

merce; that the section recognizes transportation into the State and yet permits the police power to operate upon the commodities while in transportation; that interstate commerce in its fundamental aspect continues until delivery to the consignee; and that Congress can not change the actual fundamental of interstate commerce. These objections are answered to some extent by the Rahrer case in the language therein used. It must be remembered, as has heretofore been argued, that prior to Leisy against Hardin the sale was an essential ingredient of interstate commerce just as much as the transportation, and that same doctrine as to practically everything but intoxicating liquors has been reaffirmed by the Supreme Court of the United States within the last few years. As late as the 225th United States, in the case of Savage against Jones, it was said:

The protection accorded to this commerce (interstate) extended to the sale by the receiver of the goods in the original package.

This had been the unbroken precedent of the courts, and if the court could cut off the sale as a part of commerce, why can Congress not further restrict and say that the article shall cease to be a matter of commerce 50 miles from destination, 10 miles from destination, or 5 miles within the State?

I do not say that it can; but in the Rahrer case the court used language which would indicate that that might be done.

Senator NELSON, of Minnesota, in his report some years ago to Congress on this question, stated that matter from that standpoint so clearly that I use his language. He said:

Under the Wilson law the Federal Government relinquished a portion of its control over interstate commerce, and under the proposed legislation it proposes to relinquish an additional portion. In neither case is there a delegation to the State; in both cases it amounts merely to a declaration on the part of Congress that interstate commerce in intoxicating liquors shall only be free to the extent that it does not interfere with or embarrass the police power of the State.

It is pertinent to call attention to a decision in the case of *In re Vliet* (43 Fed. Rep., 763), which follows the case of *In re Rahrer* (140 U. S., 561-564):

It is competent for Congress, under the grant of power to regulate commerce among the States, to determine when a subject of that commerce shall become amenable to the law of the State in which the transit ends.

In the Rahrer case it will be remembered the court said:

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

If the power is, in fact, in Congress to divest articles of their interstate-commerce character at any period, at any place, or at any time, then why can not Congress, as is done in section 2, provide that the police power shall apply before delivery to the consignee, or, in other words, that the interstate-commerce character shall cease before delivery to the consignee?

Mr. SUTHERLAND. Mr. President, will the Senator from Iowa permit me a single question?

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from Utah?

Mr. KENYON. Certainly.

Mr. SUTHERLAND. Interstate transportation, as I understand, begins when the article is delivered by the consignor in the State from which it is shipped and ends, and only ends, when it is delivered to the consignee in the State to which it is shipped. Now, if Congress may divest an article of its interstate character and surrender to the State the power to regulate it and deal with it as it pleases immediately after it has crossed the line of the State in which it is shipped, may it not, by the same reasoning, surrender the power to the State from which the article is shipped until the time it reaches the State line? If that be true, would it not result in Congress surrendering to the two States the whole power of interstate commerce?

Mr. NELSON. Mr. President, will the Senator from Iowa yield to me for a moment?

Mr. KENYON. Very gladly.

Mr. NELSON. The Senator from Utah [Mr. SUTHERLAND] fails to state the entire proposition in its integrity. The Supreme Court, in the case of *Leisy against Hardin*, held that interstate commerce extended until the consignee had disposed of the goods in the original package; and in the case of *Rahrer*, under the Wilson law, the Supreme Court held that Congress had relinquished its power over a part of interstate commerce, to wit, the sale of the unbroken package.

In that case the Supreme Court held that it was not a delegation of legislative authority, but that under the terms of the Wilson law the goods had not arrived within the State until delivery to the consignee. In the case of *Leisy against Hardin* the Supreme Court decided that the sale by the consignee in the unbroken package to the retail trade was a part of interstate commerce, and just as much subject to the protection of Congress as the transit by rail to the point of destination. In that

case Congress chopped off a part of interstate commerce; it chopped off the sale in the unbroken package; and in section 2 of this bill it is simply proposed to go a step further. So that the question propounded by the Senator from Utah did not cover the whole case; it did not cover one part of interstate commerce that was eliminated by the Wilson law.

Mr. SUTHERLAND. Let it cover that element, then, and then does the Senator from Minnesota say that Congress has the power to surrender to the State in which the shipment originates the power to regulate it until it reaches the State line?

Mr. NELSON. There was a surrender in that case of a part of interstate commerce, and there is no reason why Congress can not surrender another portion. The question of the delegation of legislative authority was discussed by the court in the *Rahrer* case, and the court held that there was no delegation of legislative authority.

Mr. SUTHERLAND. Then Congress may surrender to both States the entire power of interstate transportation?

Mr. NELSON. There is no doubt about that.

Mr. KENYON. Mr. President, I want to get into this joint discussion. My answer to that is perhaps not as good as that of the Senator from Minnesota [Mr. NELSON]. There can be an interstate shipment that is not protected by the interstate commerce clause, such as putrid meats. There is no delegation of power any more than the bankruptcy law results in a delegation of power, to which I will refer in a moment.

If the Supreme Court should take a different view of the proposition, yet it could sustain section 2, and I assume it would try to save any constitutional infirmity by holding that the fundamental of commerce is the actual physical transportation, and that from the point of destination to the hands of the consignee was but a mere incident of commerce. If they could hold as contrary to the unbroken line of decisions that a sale was a mere incident of commerce, then they certainly could hold that when the actual physical transportation ended, the delivery to the consignee was a mere incident of commerce. If section 2 did, in fact, as the Senator from Utah [Mr. SUTHERLAND] seems to assume, delegate to the States the power to regulate interstate commerce, I do not believe anyone would claim that it could be constitutional, although some of the language in the case of *Leisy against Hardin*, as the Senator from Minnesota has suggested, would seem to indicate that the States might act as agents of the Government in the regulation of commerce.

The language used there, as he suggests, is that the States can not exercise that power without the assent of Congress—

And further—

to concede to a State power to exclude, directly or indirectly, articles so constituted without congressional permission is, etc. * * *

Without criticizing in any way the decision in *Leisy against Hardin*, it has always seemed to me that the minority opinion was the better law. I do not think it can be successfully claimed that this statute is a delegation of power. It is a mere rule prescribed by Congress, removing the impediment to the exercise of certain police powers by providing that intoxicating liquors to be used in violation of law are a pollution of interstate commerce and will not be permitted. Congress has passed other acts analogous to this, for which some of the best constitutional lawyers in this branch of Congress as well as in the other voted—for instance, the Lacey Act, providing that dead bodies of foreign game or the dead bodies of any wild game transported into any State or Territory or remaining therein for use, consumption, sale, or storage, should upon arrival in such State be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police power. I do not find that this act has received consideration by the Supreme Court, but the Federal court had passed upon and upheld it in *One hundred and eighty-first Federal*, page 87; and the court of appeals of New York, with reference to said act and the Federal enactment in *The People of the State of New York v. Hill* (184 N. Y., 126), said, among other things:

That Congress can authorize an exercise of the police power by a State which without such authority would be an unconstitutional interference with commerce has been expressly decided by the Supreme Court of the United States in the matter of *Rahrer*, 545.

Further, the court says:

The object of the legislation, reference to the Lacey Act, was to enable the States by their local law to exercise a power over the subject of the preservation of game and song birds, which without that legislation they could not exert.

Further:

By the Lacey Act Congress determined to aid the States in the enforcement of their game laws, but did not deem it wise to enact a game law of its own, and this for the very obvious reason that the game laws of the different States vary greatly, a variation justified in no small degree by the varying climatic conditions."

Likewise reference might be made to the practice in the Federal courts conforming under statute to the practice of the various States; likewise bankruptcy proceedings and exemptions under the bankruptcy law.

In the case of *Hanover National Bank v. Moyes* (22 Sup. Ct. Rept., 857), the court had the very question as to the recognition of the local law in the matter of exemptions, dower, priority of payments, and the like; whether it rendered the bankruptcy act in question void as an attempt by Congress unlawfully to delegate its legislative power.

The provision as to exemptions, for instance, is that they shall be controlled by the existing State law at the time of the institution of the proceedings. That would obviously be an adoption of State laws yet unenacted.

Nor can we perceive—

Says the court—

in the recognition of the local law in the matter of exemptions, dower, priority of payments, and the like, any attempt by Congress to unlawfully delegate its legislative power. (Re *Rahrer*, 140 U. S., 545; 35 L. Ed., 572, 576; 11 S. C., 865.)

The real difficulty with section 2 is this: The section recognizes the transportation of liquors into the State and then permits the operations of the police power that might stop the liquor at the State line, thus keeping it out of interstate commerce. The first section takes certain liquor out of commerce and the second section seems to recognize it as being in. There is some incongruity in this. That is the proposition on which I have had great difficulty in harmonizing my views.

Mr. McCUMBER. Mr. President—

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from North Dakota?

Mr. KENYON. Certainly.

Mr. McCUMBER. I think the Senator agrees with me that the only way we can sustain the constitutionality of section 2 is on the assumption that Congress has divested the article of its interstate character the moment that it crosses the line. Do I correctly understand that to be the Senator's position?

Mr. KENYON. I agree with the Senator from Minnesota that a strong argument can be made under the *Rahrer* case, and in the language of the court in the *Leisy* case, that the interstate feature may be removed some time in the journey.

Mr. McCUMBER. That is correct.

Mr. KENYON. I do not myself so argue.

Mr. McCUMBER. That is correct; but it must be in the act itself which divests it of its interstate character.

Mr. KENYON. That is done by section 1.

Mr. McCUMBER. I have no doubt of the authority of Congress to divest it of its interstate character.

Mr. KENYON. I have no doubt of that.

Mr. McCUMBER. But as section 2 now appears is it not open to the possibility, at least, of a construction that it is not a delegation of authority and that there is no attempt to really divest it of its interstate character; and could we not cure that by a simple amendment, such as was suggested by Senator Edmunds in the argument which you have just read, by a clear and definite declaration that it shall cease to be an object of interstate commerce the moment it crosses the State line? With that declaration, I believe that the constitutionality of it may properly be sustained.

Mr. NELSON. Will the Senator yield to me for a moment?

Mr. KENYON. I will be very glad to yield.

Mr. NELSON. I want to call the attention of the Senator from North Dakota to what the Supreme Court stated in the *Rahrer* case. The language is significant and right to the point. Here is what the court said, speaking about the *Wilson* law:

The Constitution does not provide that interstate commerce shall be free, but, by the grant of this exclusive power to regulate it, it was left free except as Congress might impose restraint. Therefore it has been determined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositions upon it by the several States.

Congress now has spoken and declared that imported liquors or liquids shall, upon arrival within a State, fall within the category of domestic articles of a similar nature. Is the law open to constitutional objection? No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

We recall no decision giving color to the idea that when Congress acted its action would be less potent than when it kept silent. The framers of the Constitution never intended that the legislative power of the Nation should find itself incapable of disposing of a subject matter specifically committed to its charge. Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

In other words, the court could see no reason why Congress could not by its legislation divest an article of that kind of its interstate commerce privilege at an earlier time than it otherwise would lose that character.

Now, if in that case Congress could divest it of the right of sale in the unbroken package, why can it not go a little further and say that the article shall be subject to the laws of the State before it comes into the hands of the consignee?

Mr. KENYON. Would it have become interstate commerce if it never got over the boundary line of the State? That is the proposition that occurs to me.

Mr. McCUMBER. Will the Senator yield to me further?

Mr. KENYON. I do.

Mr. McCUMBER. The opinion read by the Senator agrees exactly with my proposition, that it may be divested, but that the law itself should show the congressional intent that it should be divested of its commercial character the moment it crosses the line. I am not arguing against the authority of Congress to divest it of its commercial character, but I insist that there should be such an amendment, or the language should be clear that the purpose is to divest it of its commercial character the moment that it crosses the line, and not leave it open to the implication that we are allowing it to proceed further as an article of interstate commerce, and yet be subject to the authority of the State.

I think there is no disagreement between the opinion the Senator has just read and the suggestion I make.

Mr. KENYON. The Senator from North Dakota will agree with me, will he not, that the Supreme Court, of course, would try to save any constitutional infirmity?

Mr. McCUMBER. Yes; but I think the act should be made wholly clear by a little statement that the article shall be divested of its commercial character the moment it arrives within the State. That would make it so clear there could be no question.

Mr. KENYON. What would be the need of that if the first section, which divests it of its interstate character, became a law?

Mr. McCUMBER. The only difference, as I understand, is that those who favor this section 2 desire to keep the article out of the State entirely or make it subject to the laws of the State the moment it gets into the State without the necessity of having to prove an intent, and if that can be done it is better than the first section.

Mr. KENYON. Mr. President, I have felt that this section could be sustained by the Supreme Court on the theory I have advanced, of holding the delivery at the end of the actual physical transportation, from there to the consignee, as an incident of commerce. But outside of this troublesome question, and one on which I confess I have no abiding legal conviction, it seems to me very clear that the power is in Congress to absolutely prohibit, as has been argued, the transportation of intoxicating liquors in commerce. In other words, to take such liquors out of interstate commerce. This full plenary power existing, it is within its power, as a part thereof, to make any regulation it may desire with reference to such intoxicating liquor, and hence it has the right to prohibit, as is done in this measure, the transportation of liquors intended by the parties interested therein to be used in violation of the law of a State.

Mr. President, the whole question was epitomized in just a few words which I want to read in closing from the dissenting opinion of Justice Harlan, in the *Bowman* case. I think no man has ever occupied a position on our Supreme bench or on any bench in any government in the world who in all his utterances has rung out so true for the right thing and for the human side of legislation and of law as did that great-bodied, great-hearted, great-brained Kentuckian.

Twenty-five years ago in the *Knight* case he painted, in a dissenting opinion, an accurate picture of the condition of this country if the majority opinion of that court as to trusts and combinations was to prevail. And looking over the condition in this country to-day and reading the views of Justice Harlan in that dissent, it would seem as if he was endowed with almost prophetic vision.

His voice rang out again in the *Northern Securities* case, and in his dissenting opinion in the *Standard Oil* and the *Tobacco Trust* cases. He believed that the conservation of human rights was as much the concern of legislation and of the courts as the conservation of property rights, and he said, with reference to this very question, and it ought to be final, in his dissenting opinion in the *Bowman* case:

If, consistently with the Constitution of the United States, a State can protect her sound cattle by prohibiting altogether the introduction within her limits of diseased cattle, she ought not to be deemed disloyal to that Constitution when she seeks by similar legislation to pro-

fect her people and their homes against the introduction of articles which are, in good faith and not unreasonably, regarded by her citizens as "laden with infection" more dangerous to the public than diseased cattle, or than rags containing the germs of disease.

And he further said:

Does the mere grant of the power to regulate commerce among the States invest individuals of one State with the right, even without the express sanction of congressional legislation, to introduce among the people of another State articles which by statute they have declared to be deleterious to their health and dangerous to their safety? In our opinion, these questions should be answered in the negative.

Then, Mr. President, in one sentence he states this proposition that this bill seeks to reach:

It is inconceivable that the well-being of any State is at the mercy of the liquor manufacturers of other States.

That is the whole problem in this bill. That is the problem which this Congress is asked to meet, and in my humble judgment this measure will help to meet it.

AGRICULTURAL EXTENSION DEPARTMENTS.

Mr. SMITH of Georgia. Mr. President, I desire very briefly to bring to the attention of the Senate the bill (H. R. 22871) to establish agricultural extension departments in connection with agricultural colleges in the several States receiving the benefits of an act of Congress approved July 2, 1892, and acts supplementary thereto.

Fifty years ago the Morrill Act was passed. Under it a land-grant college was established in each State of the Union. Twenty-five years ago the Hatch Act was passed. Under it an experiment station was established in each State of the Union.

In most of the States these two institutions work in close association. They have conducted investigations and made tests bearing upon many important questions connected with the farm, and their investigations and tests have been especially with reference to conditions in their respective States. They have studied plants and determined with accuracy the foods upon which they live and mature crops. They have analyzed different classes of soil in their respective States to determine the plant food contained, and have learned how to make it valuable. They have ascertained defects of soils and how to remove them. They have worked out improvements in seeds, and have found the way to resist plant diseases. They have tested stock, cattle and hog foods and diseases. They have found what foods will bring the best results, and have advanced in the treatment of diseases.

The National Government has spent on the agricultural colleges and experiment stations, in round figures, \$70,000,000. It spends now upon them nearly \$4,000,000 annually. From State appropriations and other sources they receive even a larger sum, but most of this last-named amount is required for new buildings and equipment.

The Government appropriates \$15,000,000 a year for carrying on the exclusively agricultural work of the Department of Agriculture. Much the larger portion of this amount is spent in investigation and experimentation. Information of great value to the rural interests of the country is secured, but an apparently small sum is devoted to showing those at work upon the farms how to apply this information. There are students at these colleges who are obtaining much aid from the instruction which they receive, but there is no sufficient provision to carry to the farmers at their homes the valuable information which has been and will be obtained by the work of the colleges and experiment stations.

Dr. True, Director of the Office of Experiment Stations, is authority for the statement that for several years the officers of the colleges and experiment stations have been pressed with the demand to carry the result of their research to the home of the farmers. A number of the colleges have secured small amounts to do this work in a partial way, but, he declares, "their work was limited by lack of sufficient funds." It is of vital importance to carry promptly to the farmers the knowledge acquired at these institutions.

A number of bills have been introduced in Congress in recent years seeking to meet this pressing want of the agricultural interests. Last fall a bill was perfected by the executive committee of the colleges and experiment stations, by officers of the Agricultural Department aided by officers of the National Soil Fertility League and Congressman LEVER and myself. I introduced the bill in the Senate, and he introduced it in the House.

The bill under consideration this morning is substantially the bill perfected, as I have just stated, the only changes of importance being two amendments, one which provides that this work from the colleges shall not interfere with the demonstration work now being done by the Department of Agriculture, and, further, that 75 per cent of the money appropriated shall be used in actual demonstration work.

The bill under consideration provides for the establishment and maintenance in each of the land-grant colleges of agriculture of an extension department to give instruction in agriculture and home economics to the farmers at their homes. This instruction is to be given by demonstration work on their own land in the local farm communities. It provides for a fixed appropriation from the Treasury of \$10,000 annually, unconditionally, to each State. It provides for an appropriation beginning with \$300,000 a year, July 1, 1913, to be prorated among the States on a basis of rural population. This appropriation is to be increased each year \$300,000 until the maximum of \$3,000,000 is reached in 1923. No State is to receive a pro rata of this sum unless it provides an equal amount for the same purpose. The money is to be expended by the State colleges of agriculture through their extension departments in each State. Seventy-five per cent of the money must be used in actual field demonstration, 5 per cent may be used in printing and publications, and the remaining 20 per cent for instructions in household economics or for further field demonstration.

The bill provides that any Federal money lost or misused must be made good by the State, and it prohibits the use of the money for purposes except those specified. It provides for reports from the colleges to the Secretary of Agriculture, and through the Secretary of Agriculture to Congress.

According to the plans of the bill, the representatives of the colleges in the various States will enlist farmers, who, under the direction of the representative of the agricultural college, will test the value on their own land of the information brought by the representative of the college. The farmer will be invited to plant under the direction of the representative of the college. The character of the soil will be tested, the nature of the fertilizer to be used explained, the selection of seed advised, and the time of planting and manner of cultivation suggested, and demonstrations will be made which will teach and prove the value of the knowledge acquired at the colleges and experiment stations. In another place the representative of the college will teach, and by experimentation demonstrate, the best manner of caring for fruit trees. In another place the best system for feeding cattle and stock, and dairying and butter making may be the subject of the demonstration. Demonstration will also be made in home economics and labor-saving machines.

The colleges of agriculture and experiment stations in each State have been devoted to a study of the peculiar conditions in the localities of their States and will, through their representative, carry to the farmer in his home the accurate information which experimentation has demonstrated, and in turn give practical demonstrations in the locality before the farmer and his neighbors of the value of the information acquired and how to use it.

This class of work will be supplemented by printed discussions of the best mode of farming, on hygiene, and on household economics, and the means available will be used to give those on the farm all that research can develop which will be of service to them.

The value to the agriculture of the country of such work is not a matter of experiment. It has been tried and proved in our own country to a limited extent. To a far greater extent it has been tried and proved in other countries. In many parts of Europe the representatives of the colleges and experiment stations are constantly engaged in the field among the farmers showing the grown farmers what has been learned at the colleges and experiment stations. I will take Belgium as an illustration. For 20 years this course has been pursued there. Information gathered at the Department of Agriculture shows the fact that as a result of this work in Belgium the production per acre in 20 years' time has increased 30 per cent and the cost of production has been decreased.

Let us think what this would mean for our country. The annual value of our agricultural products is, in round figures, \$9,000,000,000. If the increase as the result of this work were only 20 per cent, we would have an increased value of \$1,800,000,000, or a sufficient sum to meet the proposed appropriation for 600 years.

The colleges of agriculture and experiment stations sent their representative to appear before the congressional committee to tell us that they were ready for the work, could do the work, and how valuable it would prove.

This measure has been indorsed by the Association of American Agricultural Colleges and Experiment Stations, by the International Dry Farming Congress, by the New England Conference on Rural Progress, by the Tri-State Grain Growers' Convention, comprising Minnesota and the two Dakotas; by the State Grange, the State Federation of Farmers' Clubs, and

the State Horticultural Society, of Michigan; by the Farmers' Union; by the Third Wisconsin Country Life Conference; and by the Eastern Fruit Growers' Association, and by the National Grange.

It received the approval of the Secretary of Agriculture, who, referring to this bill, said:

Unquestionably such a plan, if properly carried out, would result in great good and would do much toward making useful and valuable the rapidly growing store of knowledge developed along agricultural lines.

The farm lands of our States are occupied by over 49,000,000 men, women, and children. A large number of them struggle to earn a livelihood and can not afford to experiment for the purpose of learning things that are new. If we will only carry to them those truths which have been demonstrated in the colleges of agriculture and experiment stations, they can be shown how to double the yield of their lands and at the same time lessen the cost of production.

I believe that the greatest power and chief hope of this country are found in our farm population. We have made the investment and prepared for the work. Shall we carry the results of the investment to the people who need it?

I am sure that no piece of legislation has been before Congress in years which will bring larger results for the amount spent.

There are measures we may support because we believe they are right, but we may know that this is right. There are measures we may support because we believe that they will do good, but we may know that this will do good. Most measures have possible harm connected with them. This has no possible harm.

I urge the speedy adoption of this measure, feeling sure that not alone the tiller of the soil but the people of our entire country will feel the beneficent effects of the operation of this bill.

Mr. SMITH of Arizona. Before the Senator from Georgia takes his seat, I will ask, for information, if the bill provides that on the gift by the Federal Government of \$10,000 to a State the State must also give \$10,000 in order to reap the benefit of the bill?

Mr. SMITH of Georgia. No. I explained at the outset that the bill gives \$10,000 unconditionally to each State. The further appropriations are conditioned upon like appropriations from the States, but the \$10,000 appropriation is to go to each of the States unconditionally.

PROPOSED EXECUTIVE SESSION.

Mr. CULLOM. I move that the Senate proceed to the consideration of executive business.

Mr. SMITH of Georgia. I desire to suggest that there is no quorum present.

The PRESIDENT pro tempore. The Senator from Georgia suggests the absence of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cullom	Martin, Va.	Root
Bailey	Curtis	Martine, N. J.	Sanders
Bankhead	Dixon	Massey	Smith, Ariz.
Borah	du Pont	Myers	Smith, Ga.
Bourne	Gallinger	Nelson	Smith, Mich.
Brandeggee	Gore	Newlands	Smith, S. C.
Bristow	Gronna	O'Gorman	Smoot
Brown	Guggenheim	Oliver	Stone
Burnham	Johnson, Me.	Overman	Sutherland
Burton	Johnston, Ala.	Page	Swanson
Chamberlain	Jones	Penrose	Townsend
Clapp	Kenyon	Perkins	Warren
Clark, Wyo.	La Follette	Perky	Wetmore
Crane	Lodge	Pomerene	
Crawford	McCumber	Reed	
Culberson	McLean	Richardson	

Mr. KENYON. I desire to state that my colleague [Mr. CUMMINS] is detained at home by serious illness in his family.

Mr. PAGE. I wish to announce that my colleague [Mr. DILLINGHAM] is detained on account of illness.

Mr. SMITH of Michigan. The Senator from New Mexico [Mr. FALL] is in the performance of special service, for which he was designated by the Senate, and he is obliged to be absent from the sessions. I desire the RECORD to show that his absence is due entirely to official business outside the Chamber.

The PRESIDENT pro tempore. Sixty-one Senators have answered to their names. A quorum of the Senate is present. The question is on the motion made by the Senator from Illinois, that the Senate proceed to the consideration of executive business.

Mr. MARTINE of New Jersey. I ask for the yeas and nays.

Mr. REED. Let us have the yeas and nays.

Mr. CULBERSON. Have the yeas and nays been ordered?

The PRESIDENT pro tempore. The yeas and nays have been demanded. Is there a second to the demand?

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CRANE (when his name was called). The Senator from Maine [Mr. GARDNER], with whom I am paired, is absent. In his absence, I refrain from voting.

The PRESIDENT pro tempore (Mr. GALLINGER, when his name was called). The present occupant of the chair is paired with the Senator from Arkansas [Mr. DAVIS]. He transfers that pair to the Senator from South Dakota [Mr. GAMBLE], and will vote "yea."

Mr. McCUMBER (when his name was called). I have a general pair with the senior Senator from Mississippi [Mr. PERCY]. I transfer that pair to the junior Senator from Maryland [Mr. JACKSON] and vote. I vote "yea."

Mr. MASSEY (when his name was called). I have a pair with the Senator from Virginia [Mr. SWANSON]. In his absence I refrain from voting. My vote would be in the affirmative if the Senator from Virginia were present.

Mr. PERKINS (when his name was called). I have a general pair with the junior Senator from North Carolina [Mr. OVERMAN]. As he is absent from the Senate, I will withhold my vote.

The roll call was concluded.

Mr. CLAPP (after having voted in the affirmative). I notice that the senior Senator from North Carolina [Mr. SIMMONS], with whom I have a general pair, is not in the Chamber. I therefore feel compelled to withdraw my vote.

Mr. PENROSE (after having voted in the affirmative). I notice that the junior Senator from Mississippi [Mr. WILLIAMS], with whom I am paired, has not voted. Therefore I withdraw my vote.

Mr. McLEAN (after having voted in the affirmative). I notice that the junior Senator from Montana [Mr. MYERS], with whom I am paired, is not in the Chamber. When I voted I thought he was present. I therefore withdraw my vote.

Mr. OLIVER (after having voted in the affirmative). I notice that the junior Senator from Oregon [Mr. CHAMBERLAIN], in company with most of the Senators on the other side, is out of the Chamber, and having a general pair with him, I am compelled to withdraw my vote.

Mr. ROOT. Mr. President, I think all those Senators were here when the roll call began. I think they were in the Chamber and that they are probably now in the cloak room. I do not know why.

Mr. JONES. I desire to state that my colleague [Mr. POINDEXTER] is detained from the Chamber by important business. I do not know how he would vote if present.

The result was announced—yeas 29, nays 2, as follows:

YEAS—29.

Borah	Crawford	Kenyon	Smoot
Bourne	Cullom	Lodge	Sutherland
Brandeggee	Curtis	McCumber	Townsend
Bristow	du Pont	Nelson	Warren
Brown	Gallinger	Page	Wetmore
Burnham	Gronna	Root	
Burton	Guggenheim	Sanders	
Clark, Wyo.	Jones	Smith, Mich.	

NAYS—2.

Martin, Va.	Martine, N. J.
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NOT VOTING—63.

Ashurst	Dillingham	McLean	Richardson
Bacon	Dixon	Massey	Shively
Bailey	Fall	Myers	Simmons
Bankhead	Fletcher	Newlands	Smith, Ariz.
Bradley	Foster	O'Gorman	Smith, Ga.
Briggs	Gamble	Oliver	Smith, Md.
Bryan	Gardner	Overman	Smith, S. C.
Catron	Gore	Owen	Stephenson
Chamberlain	Hitchcock	Paynter	Stone
Chilton	Jackson	Penrose	Swanson
Clapp	Johnson, Me.	Percy	Thornton
Clarke, Ark.	Johnston, Ala.	Perkins	Tillman
Crane	Kern	Perky	Watson
Culberson	La Follette	Poindexter	Williams
Cummins	Lea	Pomerene	Works
Davis	Lippitt	Reed	

The PRESIDENT pro tempore. Twenty-nine Senators have voted in the affirmative and 2 in the negative—not a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crawford	McLean	Root
Bacon	Culberson	Martin, Va.	Sanders
Bailey	Cullom	Massey	Smith, Ga.
Bankhead	Curtis	Myers	Smith, Mich.
Borah	du Pont	Nelson	Smith, S. C.
Bourne	Fletcher	Newlands	Smoot
Bristow	Gallinger	O'Gorman	Stone
Brown	Guggenheim	Oliver	Sutherland
Burnham	Hitchcock	Overman	Swanson
Burton	Johnson, Ala.	Page	Tillman
Chamberlain	Jones	Penrose	Townsend
Clapp	Kenyon	Perkins	Warren
Clark, Wyo.	Lodge	Reed	Wetmore
Crane	McCumber	Richardson	

Mr. OLIVER (during the calling of the roll). If it is in order now, I call attention to the fact that my pair is here, and I therefore ask to have my vote recorded on the vote just taken.

The PRESIDENT pro tempore. It is too late for the Senator to vote. The roll is now being called to determine whether a quorum is present.

Fifty-five Senators have answered to their names. A quorum of the Senate is present. The Senator from Georgia [Mr. BACON] will please take the chair to preside over the impeachment proceedings.

Mr. BACON assumed the chair as Presiding Officer.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDING OFFICER (Mr. BACON) having announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald, the respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, Mr. Robert W. Archbald, jr., and Mr. Martin.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The Sergeant at Arms made the usual proclamation.

The PRESIDING OFFICER. The Secretary will read the Journal of the last sitting of the Senate as a Court of Impeachment.

The Secretary read the Journal of Tuesday's proceedings of the Senate sitting as a Court of Impeachment.

The PRESIDING OFFICER. Are there any inaccuracies in the Journal? If not, it will stand approved. Counsel for the respondent will proceed.

TESTIMONY OF DWIGHT J. BEARDSLEE.

Mr. WORTHINGTON. I ask that Dwight J. Beardslee may now be called.

Dwight J. Beardslee, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Give us your full name, please, Mr. Beardslee.—A. Dwight J. Beardslee.

Q. Where do you live?—A. Peckville, Pa.

Q. What is your business?—A. I am in the coal business.

Q. In what species or department of the coal business?—A. In the washery business.

Q. Washing culm dumps?—A. Yes, sir.

Q. Do you know what is called the Katydid culm dump, near Moosic, Pa.?—A. I do.

Q. Did you ever have occasion to examine it with a view to determining its value?—A. Yes; I looked it over.

Q. When was that?—A. I think it was some time last April.

Q. At whose instance?—A. A man by the name of Davis.

Q. Do you know his full name?—A. I believe the man's name was Jones. I had that wrong. It was Mr. Jones. I do not know the man's first name.

Q. Do you know whether it was Thomas Star Jones, or—A. I believe that was what they called him; but I am not sure about it.

Q. Did you go alone or were you in company with somebody else?—A. I was in company with somebody else.

Q. Who?—A. C. C. White, Robert Davis, and Mr. Jones.

Q. What kind of an examination did you make of the dump?—A. I looked the dump over. I did not examine it particularly, only just as I walked around it, to see the size of it.

Q. About how much time did you spend on the examination or around the dump?—A. About two hours.

Q. Tell us what conclusion you reached, if you reached any?—A. I could not find any water. That was the first thing I asked about. And the next thing, I thought the dump was too small to warrant an operation.

Q. Why too small to warrant an operation; what does that mean?—A. It was too small a tonnage to pay for building a plant there, I thought.

Q. What would it have cost to have built a plant and operated it properly and to have gotten the water up to it?—A. I do not know what it would have cost to get the water, because I did not know where you could get it. To build a plant there would have cost from \$15,000 to \$18,000.

Q. Fifteen to eighteen thousand dollars to build the plant?—A. I should think so.

Q. And for the water an additional sum, whatever it would cost?—A. Yes, sir.

Q. But you did not see where you could get it at all?—A. I did not that day; no, sir.

Mr. WORTHINGTON. That is all.

Mr. Manager CLAYTON. We have no questions.

The PRESIDING OFFICER. The witness is excused.

TESTIMONY OF REESE ALONZO DAVIS.

Reese Alonzo Davis, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Where do you live?—A. Scranton, Pa.

Q. What is your business?—A. I am office man for my brother, mining engineering office.

Q. Have you had any experience in the matter of ascertaining the value of coal dumps in that region?—A. Just a little.

Q. Tell us briefly what your experience has been.—A. Well, I used to look after the mines we operated ourselves for several years. I used to look after the mines mostly.

Q. You say the mines "we operated"?—A. My brother and myself.

Q. For how many years were you engaged in that way?—A. About the mines?

Q. Yes.—A. All my life.

Q. You say all your life. Might I ask how old you are?—A. Forty-two.

Q. And for twenty-odd years you have been engaged in that sort of business?—A. Yes.

Q. Did you at any time have occasion to visit the Katydid dump near Moosic, Pa.?—A. Yes, sir.

Q. When was that?—A. April 6, 1912.

Q. At whose instance did you go there, for what purpose?—A. Mr. Jones, of Scranton—Thomas H. Jones—came in the office one day and said that he had a culm dump with 150,000 to 200,000 tons of culm; and I said, "If you have a dump like that I have got a purchaser." So I got Mr. Beardslee in the office and we went down to look it over, and when we got there I could not see any value in it myself. I did not measure it up, did not test it, but just paced it off.

Q. You paced it and examined it, and reached your conclusion in that way, did you?—A. Well, we saw the tonnage was not there, and we did not bother.

Q. What do you mean by saying you saw the tonnage was not there?—A. The tonnage that Mr. Jones claimed. He claimed about 150,000 to 200,000 tons. Mr. Beardslee said it was not worth while to bother with it; he said he would not take it for a gift.

Q. Mr. Beardslee has been here and told us what he thought about it, but I would like to have your judgment about it.—A. Those are the very words he said. He said he would not take it as a gift.

Mr. Manager NORRIS. We object to that kind of an examination.

The PRESIDING OFFICER. That will be excluded.

Q. (By Mr. WORTHINGTON.) I do not want that. Of course, that is not an answer to my question. What we want to know is the conclusion you reached as to the quantity and value.—A. I did not think there was much value there, because it would not pay to put up a washery to operate it; at least, I did not think so.

Q. Do you know about the cost of washeries?—A. No, sir; I have not been in that line—in the operating line—for the past eight years. Therefore I am not versed on the price of material and stuff to-day.

Q. Have you had experience in estimating the quantity of material in these dumps?—A. A little; yes, sir.

Q. As foreman, you said, or acting for your brother?—A. Acting for my brother; I worked for him.

Q. Did you form any conclusion as to how much material there was in the dump when you looked at it?—A. We just paced it off; did not measure it, you understand. We did not test it, but just paced it off.

Mr. Manager STERLING. Then I object to any question along that line. Evidently the witness knows nothing about it.

Mr. WORTHINGTON. I understand the witness has testified he has had some experience.

The PRESIDING OFFICER. He can give his estimate of the value of the property, and it will be a question as to how much weight his opinion is entitled to.

Mr. WORTHINGTON. I am asking him more particularly about the quantity.

The WITNESS. I think there was about 20,000 tons. That is, fair coal.

Q. (By Mr. WORTHINGTON.) That much fair coal?—A. Yes; below pea coal.

Q. You say below pea coal?—A. Yes.

Q. Did you form any estimate about the pea and sizes above?—A. No; I did not. We just pushed it over with our feet when we were walking over it, and we could not see—

Q. I want to find out why you say you estimated the quantity below pea. Did you find no pea and no chestnut there?—A. Well, we could not see any.

Mr. WORTHINGTON. That is all.

Cross-examination:

Q. (By Mr. Manager STERLING.) Do you know Mr. Rittenhouse?—A. I know him to see him, but not personally.

Q. Is he a competent engineer?—A. As to that I can not say.

Q. If he measured it and tested it and found 49,000 tons of coal there, you would say you did not know much about it, would you not?

Mr. WORTHINGTON. I object to asking one witness what he thinks about the testimony of another. In view of the objections made yesterday to our questions, I think it is a little surprising that such a question should be put.

Mr. Manager STERLING. If you bring witnesses here and put them on the stand and do not qualify them as experts, I do not think you have a right to ask them their opinion.

Mr. WORTHINGTON. I do not think the manager has a right to ask him what conclusion he draws from the testimony of other witnesses whom he has not heard.

The PRESIDING OFFICER. The manager might ask him, if he thought it proper to do so, whether the fact that the estimate of another person was so and so, and that was brought to this witness's knowledge, it would cause him to change his mind.

Q. (By Mr. Manager STERLING.) If an estimate and a mechanical test made by Mr. Rittenhouse showed 49,000 tons, then you would say you were mistaken in your judgment?—A. No, sir; I would not. I would take my own judgment.

Q. You can tell better by just looking at the dump than a mining engineer can tell by actual measurement and test?—A. Not necessarily; no.

Q. If Mr. Saums, the engineer who measured it and tested it for the Du Pont Powder Co., disclosed 90,000 gross tons and 55,000 tons of coal, then would you say that your judgment was wrong?—A. No.

Mr. Manager STERLING. That is all.

The WITNESS. I take my own judgment.

Q. (By Mr. Manager STERLING.) Yes; you would go out and just look at a dump and step it off and then take your judgment in preference to any engineer's, would you?—A. No; not necessarily so.

Q. Just answer that question.—A. If I thought the dump was of any value when I took a man down there to purchase it, then it would be worth while to measure it.

Q. Just answer my question.—A. I am trying to.

Q. Would you take your judgment based on the examination you made against the judgment of any competent engineer who had measured it and tested it; would you do that?—A. If it was necessary I would go down and measure it myself.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) One question about Mr. Rittenhouse. Do you know something about him?—A. I do not know Mr. Rittenhouse only to see him. I am not personally acquainted with him.

Q. Do you know anything about his reputation up there?—A. No; I do not.

Q. As an expert?—A. I do not.

Mr. WORTHINGTON. Well, then, I can not ask you about it. That is all.

The PRESIDING OFFICER. The witness may retire, and is finally excused.

TESTIMONY OF OSCAR WENDEROTH.

Oscar Wenderoth, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) You are the Supervising Architect of the Treasury?—A. I am, sir.

Q. Have you been subpoenaed to bring here from your office the plans of the Federal building in Scranton?—A. I have, sir.

Q. Where the offices of the judges there are located?—A. Yes, sir.

Q. And the post office?—A. Yes.

Q. Have you them with you?—A. I have brought what we call in the office the assignment plans—a complete set of plans of the building—the original office copy, showing the assignment of space and the arrangement of the building. I brought a duplicate.

Q. You have a duplicate set which you can leave here?—A. I was not sure whether you would demand the originals. I have a duplicate, with a certification that it is a true copy.

Mr. WORTHINGTON. As far as I am concerned, we can use the duplicate, and let the witness take the originals back with him.

Mr. Manager FLOYD. We object, unless we know the purpose of it.

Mr. WORTHINGTON. Let us have the plans identified first, and then when we offer them it will be time enough to raise any question. We can identify them and let the witness go.

Mr. Manager FLOYD. Certainly.

Q. (By Mr. WORTHINGTON.) What is this [indicating]?—A. That is a photograph of the building, in case it should be called for.

The PRESIDING OFFICER. Speak louder, so everyone can hear.

The WITNESS. I brought a photograph of the building in case there should be a call for it and two sets of plans, one an original office copy and the other a certified duplicate of the original office copy.

Mr. WORTHINGTON. I ask to have these plans marked now simply for identification, and the question of offering them in evidence will come up later. Take the photograph first. I am having the certified copies marked, not the originals, which I propose to let the witness take back with him, unless there is objection.

Mr. Manager FLOYD. You are not offering them in evidence now?

Mr. WORTHINGTON. No; I am not offering them in evidence now. I called this witness at this time so that he may be allowed to go. He is in charge of the office up there, and we ought not to keep him waiting any longer than is necessary. So far as we are concerned, the witness can go. It is perfectly understood these papers are not now offered in evidence; they are merely marked for identification.

Mr. Manager FLOYD. I desire to say, Mr. President, on behalf of the managers, that we did not object to them on the ground that they were certified copies instead of the originals, but we desire to reserve the right to object to the testimony for other reasons when it is offered.

Mr. WORTHINGTON. Then the witness may be discharged.

The PRESIDING OFFICER. The witness may be finally discharged.

TESTIMONY OF CLARENCE S. WOODRUFF.

Clarence S. Woodruff, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) What is your full name?—A. Clarence S. Woodruff.

Q. Where do you reside?—A. Scranton, Pa.

Q. What is your business?—A. I am an attorney at law.

Q. In what building there is your office?—A. In the Republican Building.

Q. How far is that from the office of W. P. Boland?—A. Right next to it.

Q. Do you know him?—A. Very well.

Q. And his brother?—A. Yes, sir.

Q. He has an office there, too?—A. Yes.

Q. Where is it?—A. Next to Mr. Christy Boland is Mr. Will Boland's office.

Q. I will ask you whether or not, about the 1st of November, last, you had an interview Mr. Christopher G. Boland, and he took you into his office in the Republican Building?—A. I did.

Q. And shut the door, and then had a conversation with him?—A. Yes, sir.

Mr. Manager FLOYD. I object to any conversation between this witness and Christopher Boland.

Mr. WORTHINGTON. When Mr. Christopher Boland was on the stand I laid the foundation for this evidence—

Mr. Manager CLAYTON. Where did you lay it?

Mr. WORTHINGTON. By asking him on cross-examination whether he did not have this interview with this witness at this time and make the statement that I now offer to prove he did make.

Mr. Manager CLAYTON. What page?

Mr. WORTHINGTON. I do not remember. Mr. Simpson will give it to you in a moment.

Mr. Manager FLOYD. I do not object to his repeating to this witness the question he asked Mr. Boland.

Mr. WORTHINGTON. That is what I propose to do.

Mr. Manager FLOYD. If that is what he is proposing to do, go ahead with the question. If it is for the purpose of contradicting Mr. Boland, I do not object, and I presume that is the object.

Mr. WORTHINGTON. That is the purpose and the sole purpose of it—to contradict Mr. Christopher Boland.

Mr. Manager FLOYD. We do object, because that is a matter that counsel brought out on cross-examination.

The PRESIDING OFFICER. Counsel for the respondent may proceed. Objection has been made, and counsel for the respondent has the floor.

Mr. WORTHINGTON. I will now proceed to state the question I propose to ask. You will not answer until—

Mr. Manager STERLING. Will counsel give us the date on which that question was asked?

Mr. WORTHINGTON. We are looking for it. We will have it in a moment. While they are looking for that let me ask you about another matter.

Q. (By Mr. WORTHINGTON.) Is your office on the same side of the Republican Building; is it on the side next to the Federal building?—A. Yes, sir.

Q. Where Judge Archbald had offices while he was judge there?—A. Yes, sir.

Q. Do you know about the relation of the office of William P. Boland to the office the judge occupies?—A. I do.

Q. What is that relation?—A. It is about 60 feet back from the street from Judge Archbald's window, and the distance between the Republican Building, where Mr. Boland's office is, and the Federal building, where Judge Archbald's office is, is 50 feet, so that the distance across would be the hypotenuse of a right angle, one side being about 50 feet and the other side about 60 feet.

Q. Do you know about Judge Archbald's offices there, those he formerly occupied and those he has occupied since he became a judge of the Commerce Court?—A. Yes, sir; I do.

Q. What change was made then?—A. A change was made from the office in front to an office in the rear; about 50 feet.

Q. I ask you if that change was made about the time he became a judge of the Commerce Court? As a matter of fact, do you know when it was made?—A. I do not remember just when it was made.

Q. Do you remember that it was made last spring?—A. It was made recently; yes; since he became judge of the Commerce Court.

Q. You do not know just when it was made?—A. I think some time last spring. My office is just across from where he is now.

Mr. Manager FLOYD. On what page?

Mr. WORTHINGTON. I am trying to find it. [After a pause.] It is page 420. I will ask the witness the question in the language in which I asked it to Christopher Boland. Do not answer, you understand, until you hear it, whether there is objection to the question. [To the witness:] I will ask you whether on or about the 1st of November last, in Christopher G. Boland's office in the Republican Building, he requested you to see Judge Archbald, and to state to Judge Archbald for him that if the suit of the Marian Coal Co. against the Delaware, Lackawanna & Western Railroad Co. was settled he, Christopher, would withdraw from all impeachment proceedings against Judge Archbald, and asked you to communicate that message to Judge Archbald.

Mr. Manager FLOYD. I object.

Mr. Manager WEBB (to Mr. Worthington). What does Boland say?

The PRESIDING OFFICER. The manager objects.

Mr. WORTHINGTON. Shall I go on and read what he said?

The PRESIDING OFFICER. No; the Chair understands that counsel is now proposing to answer the objection of the manager.

Mr. WORTHINGTON. The manager asked me what Christopher Boland said in response to that.

Mr. Manager WEBB. Never mind; I know.

Mr. WORTHINGTON. I will remind the Chair and the Senate that later the senior Senator from Texas asked the witness a question about that on page 422, and the witness gave an answer which covers three-fourths of a page.

Mr. Manager FLOYD. On what page is the first question?

Mr. WORTHINGTON. At the top of page 420 is the first question. The question put to him by the Senator from Texas is on page 422. Do you object?

Mr. Manager FLOYD. Yes, sir; we object.

Mr. WORTHINGTON. I am waiting to hear the objection. I propounded the question.

The PRESIDING OFFICER. Which question is it that was asked the witness?

Mr. WORTHINGTON. I paraphrased the question put to Christopher G. Boland at the top of page 420.

Mr. Manager FLOYD. Mr. President, to that we object. We object to this testimony because we think it is on a collateral matter and is wholly immaterial and irrelevant to the issue in this case. We can not impeach a witness on immaterial matters. That is a well-known rule of law. As to whether at some subsequent time he had a conversation with Mr. Boland in which Mr. Boland made any such statement or request of this witness, it seems to us, is wholly immaterial to the issue in the

case, and for that reason we object to it. We concede the right of counsel to contradict a witness upon material matters, unless they have brought them out themselves on cross-examination, and then we do not concede that right. That is one reason for objecting, Mr. President.

The PRESIDING OFFICER. The counsel for the respondent will proceed.

Mr. WORTHINGTON. The managers were consulting together, apparently, as to whether they would say anything further.

Mr. Manager CLAYTON. We reserve the right to be heard at the end of your remarks.

Mr. WORTHINGTON. Christopher G. Boland, as the President remembers, was a witness called on behalf of the managers, and gave testimony which they considered of great importance and which the Senate thought of sufficient importance for a vote to admit. I had always supposed until now that there was no question that when any witness is put on the stand his adversary may show whether that witness has done anything which shows that he is interested in the result of the case or has attempted to bring about a result in that case by unfair means.

If Christopher G. Boland, for instance, had come to Judge Archbald and said to him, "If you will pay me \$100,000 I and my brother will withdraw from these impeachment proceedings," I take it for granted nobody would deny that that was competent evidence to show the kind of a man he is and to show what credibility should be attached to his evidence. That is just in substance what he did. We contend, and we offer to prove by this witness, that he asked Mr. Woodruff to come down into his office, took him into his office, where there was no one else, and carefully shut the door, and then said to him, "I want you to go and see Judge Archbald and tell him that if the claims of the Marian Coal Co. against the Delaware, Lackawanna & Western Railroad Co., the rate case before the Court of Commerce of which we have heard so much, could be settled, he and his brother would withdraw from the impeachment proceedings. What is that but an attempt of the witness to get somebody to bribe him and to come here and give testimony because he was not bribed. We expect to follow that up by showing that the witness, as a matter of fact, did communicate his message to Judge Archbald in the presence of another witness, who is here. So far as that is concerned, that is another matter. The question now is whether we may prove that Christopher G. Boland, a witness for the managers, undertook in this way to get money from or through Judge Archbald for the purpose of stifling his testimony here.

Mr. Manager WEBB. Mr. President, the absurdity of the answer to that question is perfectly evident from the fact that the case which counsel speaks of was settled by the Interstate Commerce Commission last summer and could not have been pending when this conversation took place last month, as is alleged.

It is a universal rule of evidence, Mr. President, that wherever counsel on cross-examination brings out collateral testimony they are forever bound by the answers of the witness with reference to all collateral matters. This is purely, of course, a collateral question which Mr. Worthington brought out from Mr. C. G. Boland, and he is bound by those answers. The only object that he has now in the introduction of this witness is to contradict Mr. Boland about a purely collateral matter, and it is a universal rule of practice and of evidence that that can not be done. If that were not so, we could be piling up straw men here from one year to another to knock them down.

If Mr. Boland made a false statement about a matter which is purely collateral, he could not be indicted for perjury, because it is not a material statement. Therefore the rule is wise that wherever counsel draws out from a witness on cross-examination a collateral matter counsel can not put up additional evidence to contradict that. The only object of this testimony is to contradict what Mr. Worthington brought out from the witness on a collateral question entirely. Therefore we say that it is not competent in any view of the case.

The PRESIDING OFFICER. The Chair thinks that for the purpose of contradicting a witness upon a collateral matter it is clearly inadmissible; but independently of the fact that the witness, Boland, had testified one way or the other on this particular point, it seems to the Chair that the counsel is entitled to show any fact which would indicate bias on the part of the witness.

The Chair puts his ruling on that ground exclusively, not on the ground that counsel has not a right to contradict it; but if the witness had not been interrogated as to that matter at all by the counsel, it appears to the Chair that counsel would

have a right to show any facts which would prove bias on the part of the witness. The Chair will state to counsel in the beginning that the question whether or not the witness ultimately communicated to the respondent has nothing to do with this case.

Mr. WORTHINGTON. Well, I will have to restate the question, I presume. The Reporter would probably have to hunt some time for it. [To the witness:] Mr. Woodruff, I will ask you whether, on or about the 1st of November last, Mr. Christopher G. Boland took you into his office in the Republican Building—

The PRESIDING OFFICER. The Chair would suggest to counsel that in view of the ruling of the Chair the question ought to be asked independent of any interrogatory which was propounded to the other witness.

Mr. WORTHINGTON. Very well.

The PRESIDING OFFICER. It is purely on the ground that it is to show bias.

Mr. WORTHINGTON. I have simply made a memorandum for myself to frame the question on. [To the witness:] I will ask you, then, whether or not, on or about the 1st of November last, Mr. Christopher G. Boland invited you into his office in the Republican Building in Scranton, and whether you went with him, and then he shut the door?—A. Yes, sir.

Q. Nobody else was present?—A. I think not.

Q. I will ask you whether or not he then and there said to you in substance that he wanted you to see Judge Archbald?

Mr. Manager NORRIS. Mr. President, I object to the form of the question. I think under the ruling of the Chair the question counsel has asked and which the witness has answered is wrong. He can not put the answer into the witness's mouth.

Mr. WORTHINGTON. The witness had already testified that he went there. I will not ask the witness whether he said anything that might prejudice this case. I ask him whether or not he said anything in relation to the claim of the Marian Coal Co. against the Delaware, Lackawanna & Western Railroad Co., and the settlement thereof.

Mr. Manager FLOYD. We object. I do not see how that could have any relation to the showing of bias.

The PRESIDING OFFICER. The Chair thinks the question is legitimate on the line already indicated.

Mr. WORTHINGTON. Now, Mr. Woodruff—

The WITNESS. What he said might result in substance to that, but I did not take in that way what he said to me.

Mr. WORTHINGTON. Tell us what he did say.

Mr. Manager STERLING. Mr. President, we object. He can only answer "yes" or "no" to the question which is asked. If we desire on cross-examination to know what he did say we can draw it out. There is just one question the counsel can ask—the direct question he asked of Boland—and this witness can answer "yes" or "no."

The PRESIDING OFFICER. The Chair would rule that the question is not for the purpose of contradicting the former witness, Boland, but for the purpose of showing bias, and for that purpose the counsel has a right to show what the witness said. The counsel for the respondent will proceed.

Q. (By Mr. WORTHINGTON.) Will you proceed to state what Mr. Christopher G. Boland said to you on that occasion?—A. He said that there had been negotiations made between Morgan Davis, of Scranton, and the Delaware, Lackawanna & Western Co. in reference to the purchase of the Marian coal dump. He said that that had been going on for some three months, and that it had virtually come to an end. He said that his brother in Wilkes-Barre had been very anxious about making the sale, as he himself was, and that he had seen Judge Wheaton, of Wilkes-Barre, and Judge Wheaton had suggested that some one should see Maj. Warren, who was the attorney for the Delaware, Lackawanna & Western Co., and suggested my name, so Mr. Boland said, with a view that the sale might be made, and that, as that was the bone of contention in this matter, this trial here might be obviated and done away with, and I should also see Judge Archbald and tell him for Mr. Boland what his feelings were in the matter.

Mr. Manager WEBB. Mr. President, do you think that shows bias?

The PRESIDING OFFICER. It is not for the Chair to determine. It is for the Senate to determine.

Mr. Manager WEBB. I ask you to rule out the answer. It does not show bias, and is not the way to show bias if it did show bias.

Mr. WORTHINGTON. I had supposed, as the Chair ruled a few moments ago, it had been settled for the purposes of this case we might show bias in the way indicated.

The PRESIDING OFFICER. The counsel will proceed.

Q. (By Mr. WORTHINGTON.) Mr. Woodruff, you made a statement to me in Scranton about this proposition, did you not?—A. I did.

Q. On the 22d of November last?—A. Some time; I do not know just when it was.

Q. About the 22d of November?—A. Yes, sir; about that time.

Q. In the Hotel Casey in Scranton?—A. Yes, sir.

Q. Mr. Simpson was present?—A. Yes, sir.

Q. And Mr. R. W. Archbald, jr.?—A. Yes, sir.

Q. I want to know whether or not at that time you did not tell us that what Christopher G. Boland said on that occasion was this—

Mr. Manager WEBB. We object to that, Mr. President. The counsel is going to impeach his own witness now.

Mr. WORTHINGTON. I listened to my friends the managers arguing the other day when their witness was upon the stand.

The PRESIDING OFFICER. The counsel will confine his question.

Mr. Manager WEBB. He could only be permitted to do it on the ground that the witness is unfriendly, but he has no unfriendly witness before him now.

Mr. WORTHINGTON. Nearly every witness examined in this case on behalf of the managers, as soon as he did not say anything, was hauled up by what he said before the Judiciary Committee of the House.

Mr. Manager STERLING. We object to that kind of a remark.

The PRESIDING OFFICER. The counsel will proceed.

Mr. WORTHINGTON. I wish to read this question to the witness and refresh his memory by it, and then ask him if he did not say that and if it is not true. It is precisely the line of examination pursued by the managers, as to which we objected, but the Chair decided that it was proper.

The PRESIDING OFFICER. The Chair thinks counsel has a right to question the witness along the line he is pursuing.

Q. (By Mr. WORTHINGTON.) I will ask you whether or not you did, on the occasion I have referred to, at the Hotel Casey, on or about the 22d of November last, in the presence of the gentleman I have mentioned, say to me that on the occasion concerning which you have just testified, Christopher G. Boland said to you this in substance, that he was about to go on a trip, and he requested you to attend to the matter right away; that he requested you to see Judge Archbald and Maj. Warren and tell them that if the case of Boland against the Delaware, Lackawanna & Western Railroad before the Interstate Commerce Commission could be settled, he and his brother, W. P. Boland, would withdraw from the impeachment proceedings against Judge Archbald?

Mr. Manager WEBB. Mr. President, we object to that on two grounds. First, it is a leading question; and it contradicts what the witness has already sworn.

The PRESIDING OFFICER. The Chair does not understand it to be a leading question except that in so far as refreshing the memory of the witness there is necessarily always a suggestion to the witness. That can not be avoided. The latter question is not admissible, in the opinion of the Chair.

Q. (By Mr. WORTHINGTON.) In order that there may be no misunderstanding, Mr. Woodruff, I repeat the former question, and that is whether or no at the Hotel Casey in Scranton, at the time in question, November 22 last, or thereabouts—

The PRESIDING OFFICER. The Chair thinks that the question should be put in a different way. That is not properly refreshing the witness. The counsel does not need any suggestion from the Chair as to putting it in such a shape as will make it admissible. Refresh the memory of the witness and then ask him what is the fact.

Q. (By Mr. WORTHINGTON.) Well, Mr. Woodruff, to refresh your memory, I will ask you whether you did not tell me at the Hotel Casey, on the occasion in question, that Christopher G. Boland—

The PRESIDING OFFICER. The Chair does not think that is the proper question. The counsel can read to the witness the words before him, and then ask him, if his memory is refreshed, what does he now say as to the conversation.

Q. (By Mr. WORTHINGTON.) Let me, as a preamble to that, ask the witness this question: Did you observe that while you were making the statement I was making notes and apparently writing down what you said?—A. I did, sir.

Q. I will read this to you and see whether it refreshes your memory of it, so that you can recall what actually happened when you were talking with Christopher G. Boland:

He requested me to see Judge Archbald and Maj. Warren and tell them that if the case of Boland against the Lackawanna & Western

Railroad Co. before the Interstate Commerce Commission could be settled he and his brother, W. P. Boland, would withdraw from the impeachment proceedings against Judge Archbald.

A. I knew nothing from Christy Boland at the time about the case in the Interstate Commerce Commission at all. There was nothing of that sort mentioned. The only question was as to the sale being perfected of this Marian Coal Co. to the Delaware, Lackawanna & Western Co., which he said had been going on for three or four months through Morgan Davis, and that if that could be accomplished, so that they would be wiped out entirely from that, the bone of contention in this case here would be ended.

Q. That is, if the Lackawanna Railroad Co. would buy their claim—

Mr. Manager WEBB. Mr. President, I object.

Mr. WORTHINGTON. And buy their property—

The WITNESS. Yes.

The PRESIDING OFFICER. The manager objects to the question.

Mr. WORTHINGTON. I should correct that.

Mr. Manager WEBB. Let the witness explain what next he did, and let the Senate interpret what the words mean.

The PRESIDING OFFICER. Counsel has a right to interrogate him without putting a leading question.

Q. (By Mr. WORTHINGTON.) Did Christopher G. Boland at that time say anything to you about what would happen if the Lackawanna Railroad Co. would buy the property of the Marian Coal Co.?—A. He did not say what would happen, but he said he was sick and tired of this thing, and that he wanted to be entirely free from it, and that if that could be done he thought that the source of contention would be ended. I said to him, "Christy, does Will feel the same way?" and he said, "I think he does."

Q. Now, as to taking you into his room and shutting the door and having that conversation with you, did he not tell you to go and see Judge Archbald and make the proposition to him?—A. No; he said to make a proposition to Maj. Warren, as he was the attorney for the Delaware, Lackawanna & Western Co., and then he said, "Go to see Judge Archbald about it. I want him to know just how I feel in this matter."

Mr. WORTHINGTON. I understand, Mr. President, you have already held that I can not ask him whether he did go to Judge Archbald and what took place.

The PRESIDING OFFICER. The Chair does not think that is material.

Q. (By Mr. WORTHINGTON.) Very well, I will not press it. [To the witness:] What was it he said that he was sick and tired of?—A. I do not know what he said, but I inferred, and I think rightly, the impeachment proceedings.

Q. Did Mr. Christopher G. Boland tell you anything about going away—the trip he was about to make at that time?—A. Yes, sir.

Mr. Manager WEBB. We object to that, as it comes within your honor's ruling as to showing bias.

The PRESIDING OFFICER. If it is for the purpose of showing bias, the Chair will hold that it is in order.

Mr. WORTHINGTON. Nothing that I have said will amount to much, unless I show that he did report to Christopher G. Boland after he came back from that trip and that his proposition of settling this case in that way would not be accepted or considered, and hence his bias and prejudice when he comes here on the stand as a witness against Judge Archbald. I think it is absolutely essential for me to show that. I do not ask him to say whether he saw Judge Archbald, but when Christopher G. Boland returned from that trip, what he did report to him about this matter. Then we have the foundations for the bias and prejudice of Christopher G. Boland in this case.

The PRESIDING OFFICER. The Chair thinks when testimony is admitted showing the proposition which has been testified to, the whole limit has been reached. The question what was afterwards done does not affect the question whether or not he was biased. The fact of bias would be shown by testimony already adduced if it is sufficient for that purpose, and would not be added to by showing that it was communicated to the respondent.

Mr. WORTHINGTON. This was only a short time ago, and if nothing further transpires to show that the result was communicated to him it might be that he would still suppose there was a chance to effect a settlement in that case.

The PRESIDING OFFICER. The Chair does not think it is admissible.

Q. (By Mr. WORTHINGTON.) Well, I bow to the decision of the court. [To the witness, presenting paper.] I wish to show you the plan of the second floor of the Federal building which has been identified here and ask you to point out on

that the rooms which Judge Archbald formerly occupied and those to which he changed last spring.—A. (Examining paper.) I—

Mr. WORTHINGTON. Wait a moment. Please indicate with the letter A the office Judge Archbald occupied before he changed last spring.

The WITNESS. I mark the "A" here.

Mr. WORTHINGTON (exhibiting). Mark "A" is the office formerly occupied. The witness marked with red pencil the letter "A." [To the witness.] Now, please mark with the letter "B" the office to which he changed last spring.

Mr. Manager CLAYTON. The document is not offered in evidence yet?

Mr. WORTHINGTON. Not yet. As soon as I have exhibited these marks to you I propose to offer it in evidence.

Mr. Manager CLAYTON. Let us get through with the witness.

Mr. WORTHINGTON. That is all.

Q. (By Mr. Manager CLAYTON.) Mr. President, I desire to ask the witness a question. [To the witness:] What is your feeling toward Judge Archbald?—A. Very friendly.

Q. Did you not intercede with the President to prevent an investigation, which has led to these impeachment proceedings?—A. I wrote a letter to the President, but not until afterwards. I simply set forth the feeling that the community had as regards Judge Archbald in Scranton.

Mr. WORTHINGTON. Mr. President, I think I will have to call for that letter unless—

Mr. Manager CLAYTON. I have not offered any letter. I was just asking him about his feeling for Judge Archbald. I never referred to the letter.

The PRESIDING OFFICER. The manager will proceed.

Mr. Manager CLAYTON. That is all I desire to ask. The witness has answered my question. I called for no letter.

Mr. WORTHINGTON. Unless he has stated the contents of the letter he may have to strike out what he has said as to what the letter was, on the ground that the letter is the proper evidence.

Mr. Manager CLAYTON. We have no objection to that. We do not call for the letter. It was merely to show the friendly bias of this witness toward Judge Archbald. I have accomplished that, and I have no further question to ask.

Mr. WORTHINGTON. There is a question that I should have asked before I announced that I was through with this witness. I want to ask him about his relation with Christopher G. Boland and William P. Boland up to the present, and to show that he is friendly to them.

The WITNESS. We have been the very best of friends always.

Q. (By Mr. WORTHINGTON.) Let me ask you another question. Since Christopher G. Boland was asked this question, has he not been to talk with you about it?

Mr. Manager WEBB. Mr. President, we object to that.

Mr. WORTHINGTON. Is not that to show bias, when our friends are trying to prevent this witness from giving testimony in this case—

The PRESIDING OFFICER. The Chair does not understand the question to be of that character.

Mr. WORTHINGTON. That is the question I do mean to ask him.

The PRESIDING OFFICER. It is the proper way to ask it.

Q. (By Mr. WORTHINGTON.) Has Christopher G. Boland approached you since he testified in this case in reference to the question which I asked about—this conversation with you?—A. No, sir.

Q. He has not?—A. No, sir.

Mr. WORTHINGTON. It is suggested—and I think it is wisely suggested—that the witness mark the position on this map of the office of William P. Boland.

(The map was handed to the witness.)

Mr. WORTHINGTON (to the witness). Put the letter "C" on it.

The witness marked the letter "C" on the paper.

Mr. Manager CLAYTON. The managers were unable to hear the conversation between the respondent's counsel and the witness. As he was doing something there on the suggestion of respondent's counsel, I would like to know what it was.

Mr. WORTHINGTON. The nefarious suggestion I made was to put the letter "C" on this map about where the office of Boland would be. I think the President heard me. I will submit the nefarious result to the managers.

(The paper was handed to the managers.)

Mr. WORTHINGTON. That is all.

The PRESIDING OFFICER. The witness may retire. He is finally excused.

TESTIMONY OF CHARLES B. WITMER.

Charles B. Witmer appeared, and having been duly sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Judge Witmer, you are the United States district judge for the middle district of Pennsylvania?—A. I am.

Q. When were you sworn in as such judge?—A. On the 8th of March, 1911.

Q. You have been such district judge ever since?—A. Yes, sir.

Q. Before you were appointed district judge what office in connection with the administration of justice in the United States courts in that place did you hold?—A. I was United States marshal from July, 1906, until December, 1908, and district attorney from 1908 until I was appointed to the district bench.

Q. United States district attorney?—A. Yes, sir. I was also assistant United States district attorney in the Department of Justice before I was appointed marshal, in the administration of Attorney General Knox.

Q. Now, will you please tell us during the time you were United States marshal who it was that drew from the jury wheel the names of jurors who served in that court?—A. I did so.

Q. That was in every instance, was it?—A. In every instance.

Q. There is a question I am going to ask, Judge Witmer, which kindly do not answer until there is an opportunity to object to it. It has been testified here that in the case of Peale against the Marian Coal Co. the decision—

Mr. Manager STERLING. We object to that question. It is wholly immaterial what has been testified to here.

The PRESIDING OFFICER. Counsel has already cautioned the witness not to answer until objection may be made.

Mr. SIMPSON. It has been testified here that in the case of Peale against the Marian Coal Co. the decision of that case, which was rendered by you on August 24, 1911, was so rendered at the dictation or under the direction or influence in some way of Judge Archbald. Now, do not answer, please, until the managers can object. Will you please tell us whether that is so?

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The Chair will hear from counsel for the respondent.

Mr. SIMPSON. If the Chair please, the managers have put in evidence in this case the docket entries in this particular matter—in the matter, I mean, of Peale against the Marian Coal Co. They have asked Mr. Boland in their own case whether or not—I want to put that accurately, and it is a little difficult to do it—they have asked Mr. Boland in their own case whether the decision of that case did not affect him in that which he did in relation to this particular matter—I mean the matter which has resulted in this impeachment. When he was turned over for cross-examination, he himself then volunteered, not in answer to any question which Mr. Worthington had asked, but, in fact, volunteered—and it remains upon this record—the statement that I have embodied in the question which is now before the witness. It seems to us that it ought to be known, so that the Senators may give such effect to it as to them seems best, whether or not there was any such influence brought to bear against the Bolands as was intimated or stated in that question. That is the reason for asking this particular question of the witness.

The PRESIDING OFFICER. The Chair will state that the testimony was brought out by the counsel for the respondent, and the respondent's counsel now state that the evidence was volunteered. That evidence would have been ruled out by the Chair as immaterial if counsel had so requested. It being immaterial and having been brought out in that way, the Chair does not think that the question as now propounded is admissible.

Mr. WORTHINGTON. On another ground, Mr. President, I ask that the witness be allowed to answer this question. The honorable managers produced as a witness here Mr. Meyer, and proved by him the steps which were taken in the Interstate Commerce Commission, between the Interstate Commerce Commission and the President, for the purpose, they said, of giving the Senate the history of this transaction. In the memorandum made by Mr. Cockrell, Mr. Meyer's confidential clerk, and which Mr. Meyer, on behalf of himself and the other members of the Interstate Commerce Commission, took to the President, there is this:

Boland says the litigation referred to by Seager is the suit filed by Peale, and that Seager has inside advance information of the decision of the court, which has not yet been handed down.

Now, it seems to me, Mr. President, since the managers have introduced the history of the case for the purpose of showing that it was properly and fairly presented, we ought to be

allowed to show that they took to the President that astounding piece of information, which was wholly untrue.

The PRESIDING OFFICER. That is not evidence in this case as to any matter in issue; that is simply the history of the steps taken which resulted in this proceeding on the part of the House of Representatives. It is not in any manner evidence as to any issue here. The Chair still thinks the question is inadmissible.

Mr. SIMPSON. There is no other question we desire to ask, in view of the Chair's ruling.

The PRESIDING OFFICER. The witness may retire, unless the managers desire to question him.

Mr. Manager STERLING. We do not care to ask the witness any questions.

Q. (By Mr. SIMPSON.) There is one other question which I had overlooked. Can you tell us when it was that the room which was formerly occupied by Judge Archbald in the Federal Building in Scranton was changed so that you thereafter occupied it?—A. I do not believe that I am able to state that correctly.

Q. Can you approximate it?—A. It was done about nine months after I was appointed to the office and accepted the position.

Q. About nine months after?—A. About nine months after I entered upon the duties of my appointment.

Mr. SIMPSON. That is all. Thank you.

Mr. Manager STERLING. That is all.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF FRANK E. DONNELLY.

Frank E. Donnelly, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Donnelly, you are a lawyer, practicing in Scranton, Pa., I believe?—A. Yes, sir.

Q. How long have you been doing so?—A. Since 1900.

Q. You were attorney for the Marian Coal Co. in the case of Peale against the Marian Coal Co., which has been referred to here?—A. I was.

Q. During what period did you act as attorney for the Marian Coal Co. in that case?—A. The suit started in the early part of March, 1909, and I continued to act as attorney for the Marian Coal Co. until the 31st of July, 1912.

Q. Do not answer the question I am about to put to you until we see whether or not it is objected to, Mr. Donnelly. It has been stated here that you were in collusion with Judge Archbald against your own clients in that case. I want to ask you what you have to say about it?

Mr. Manager STERLING. We object. It is very apparent counsel knows it is improper, or he would not have presented it in that form.

Mr. WORTHINGTON. I do not quite like that statement, Mr. President. I had anticipated that the Chair would rule out this conversation, but I thought, in view of what had been stated in this public place and practically all over the country about this gentlemen, that I would not do my duty by him unless I gave him a chance on the stand to say what he has to say about it.

The PRESIDING OFFICER. The Chair does not think that counsel have the right to ask the question. The managers having objected, does counsel for the respondent desire to say anything further on the question of admissibility?

Mr. WORTHINGTON. No; I think we have argued that matter.

The PRESIDING OFFICER. Conforming to the prior ruling, the Chair will rule out the testimony.

Mr. WORTHINGTON. Then, we have nothing further to ask this witness, Mr. President.

Mr. Manager STERLING. That is all.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF C. E. SPROUT.

C. E. Sprout, having been duly sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Mr. Sprout, what is your business or profession?—A. I am a practicing lawyer.

Q. Where?—A. At Williamsport, Pa.

Q. Do you know Judge Archbald?—A. I know Judge Archbald.

Q. Were you one of the contributors to a purse given to him at the time of his going to Europe a few years ago?—A. I was.

Q. Will you tell us, please, how you became such contributor?—A. The matter was first brought to my attention at the Bellevue-Stratford Hotel early in the spring of 1910 by Maj. Everett Warren, of Scranton, who testified here yesterday. Mr. Warren stated to me that Judge Archbald was about to go abroad, and that a plan had been conceived by some of his

friends in Scranton and Wilkes-Barre to give him a complimentary dinner in New York prior to his sailing. He asked me whether I would see one or two of the prominent lawyers in Williamsport and ascertain whether they wanted to participate in this function. Subsequent to that time I had one or two telephonic conferences with Maj. Warren, and one also, I think, with Judge Frank Wheaton, of Wilkes-Barre. In those conferences we ascertained that the plan had been changed; that, instead of giving him the complimentary dinner as originally contemplated, on account of the difficulty of getting a sufficient number to attend, they would put into a purse or a fund the amount of money which it was thought the dinner would cost and give it to Judge Archbald prior to his sailing under such circumstances as would not disclose to Judge Archbald what had been done nor the names of the donors until after he had sailed from New York Harbor.

Q. Did you contribute?—A. I did.

Q. How much?—A. \$25.

Q. Did you know that the names of the contributors were to be told to him?—A. On the contrary, I was informed that the names of the contributors were not to be told or to be disclosed to Judge Archbald at all.

Q. Do you know C. La Rue Munson?—A. Very well, sir.

Q. Was he one of those to whom you made application after the plan had been changed from a dinner to a contribution?—A. I did see Mr. Munson.

Q. And he declined to make any contribution?—A. And he declined to make any contribution.

Q. What were your relations with Judge Archbald?—A. My relations were those of a practicing attorney in his court.

Q. Had you known him long?—A. I had known him since 1885.

Mr. SIMPSON. Cross-examine, gentlemen.

Cross-examination:

Q. (By Mr. Manager NORRIS.) To whom did you give your contribution?—A. I am not certain about that; but my best recollection is that I gave it to Mr. Searle, the clerk.

Q. The clerk of the court?—A. The clerk of the court.

Q. There are two Searles. To whom did you give it? You do not mean Judge Searle?—A. Not Judge Searle. I gave it either to Maj. Warren or to Ed. Searle, the clerk of the court.

Q. How much was your contribution?—A. \$25.

Q. Did you give a check for it or the cash?—A. I think I gave a check; I am certain that I gave a check.

Q. Where do you reside?—A. Williamsport, Pa.

Q. Did you talk with Mr. Munson, of Williamsport, about it?—A. Since the occurrence?

Q. Well, I had reference to about the time of the occurrence.—A. As I said a moment ago, I did see Mr. Munson and requested him to make a contribution, telling him that I intended doing so and that other members of the bar in Scranton and Wilkes-Barre were doing likewise. I did not speak to him at the time when it was contemplated giving the judge a dinner.

Q. Your contribution was made with the understanding that it was going to be a cash contribution, was it not?—A. At the time given; yes, sir.

Q. Did you learn that Mr. Searle, the clerk of the court, had put in the envelope containing the contributions the names of those who had subscribed to the fund?—A. I did not learn that until a long time after the occurrence. After Judge Archbald had sailed and while he was abroad I received a letter from him. That was the first intimation I had that he had any knowledge of the fact that I had been one of the contributors.

Q. Was your first conversation with anyone in regard to this with Mr. Searle, the clerk of the court?—A. My first conversation was with Maj. Warren.

Q. He did not live at Williamsport, did he?—A. He lived at Scranton; I lived at Williamsport, and we met in Philadelphia. We were both there attending court at that time—the supreme court.

Q. But that conversation had no relation to a cash contribution to the judge, did it? Was that not in reference to a dinner?—A. That was entirely in reference to a dinner; but, of course, that transaction was the initiative of the movement which resulted in the cash contribution.

Q. Well, so far as the cash contribution was concerned, was not that initiated by the clerk of the court?—A. So far as I know, it was initiated by Maj. Warren himself.

Q. At your meeting in Philadelphia?—A. No; subsequently, when I telephoned him. The first information I had of it was in a telephonic conversation with Maj. Warren, I being at Williamsport and he at Scranton. He told me that they had found it impossible to get a sufficient number of Judge Archbald's friends to go to New York to the dinner, and that they had therefore modified the plan.

Q. How did you happen to get in communication with the clerk about it? Do you remember that?—A. I think I had a letter from Maj. Warren, or information by telephone, that he had turned the matter over to Clerk Searle, to gather contributions, and that I should send mine to him.

Q. And you acted accordingly?—A. And I think I acted accordingly.

Mr. Manager NORRIS. That is all.

Mr. SIMPSON. That is all, Mr. President.

Mr. CULBERSON. Mr. President, I desire to ask the witness a question.

The PRESIDING OFFICER. The Senator from Texas submits a question which he wishes to have propounded to the witness. The Secretary will read the question.

The Secretary read as follows:

Q. What was the purpose in raising the fund? What was it to be used for? What was the fund actually used for by Judge Archbald?

The WITNESS. Of course, I can only answer that question in part. I am not able to say how Judge Archbald used the fund. It was contemplated to give Judge Archbald a complimentary dinner—

The PRESIDING OFFICER (to the Secretary). Hand the witness the question.

The Secretary handed the witness the question.

The WITNESS (after examining the question). I will answer the questions in their order. "What was the purpose in raising the fund?" It was supposed to be a testimonial of respect to Judge Archbald by a number of his friends who had been practicing in his court. "What was it to be used for?" I apprehend that I could not answer that. "What was the fund actually used for by Judge Archbald?" I experience the same difficulty in answering that question.

The PRESIDING OFFICER. Is there any other question for the witness? If not, he may retire.

Mr. SIMPSON. And he may be discharged, sir.

The PRESIDING OFFICER. The witness is finally discharged.

TESTIMONY OF WILLIAM G. VANDEWATER.

William G. Vandewater, having been duly sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Mr. Vandewater, what is your business?—A. Auditor of the coal department of the Delaware, Lackawanna & Western Railroad Co.

Q. What are your duties as such auditor?—A. To keep account of the production of the coal mined.

Q. Will your books show the extent of the coal shipped by the Marian Coal Co.?—A. Our books will show the production of the Marian Coal Co. and certain of their shipments; yes, sir.

Q. Can you tell us what the amount of—

Mr. Manager FLOYD. We object, Mr. President.

Mr. SIMPSON. Wait until I finish the question and then object to it, if you please.

The PRESIDING OFFICER (to the witness). Do not answer the question until directed so to do.

Q. (By Mr. SIMPSON.) Will you tell us, please, from your books what was the production of the Marian Coal Co. Now, do not answer until directed to do so.

Mr. Manager FLOYD. We object, Mr. President; we do not think the question is relevant.

The PRESIDING OFFICER. Will counsel please state the materiality of that question?

Mr. SIMPSON. There was a letter, Mr. President, offered in evidence by the managers, under date of September 1, 1911, written by Mr. Phillips, of this same company, to Mr. Loomis, of the company, setting forth what Mr. Watson's claim was, which is the matter referred to in the second of the articles of impeachment. I desire to show how that claim was made up. The purpose of this offer is to show that the books of the Delaware, Lackawanna & Western Railroad Co. show that the production of this washery was in accord with the amount stated in that letter, for the purpose of showing that Mr. Watson did not present, as is claimed by the managers, a highly exorbitant claim, but that he presented a claim in accordance with the figures which appeared upon the books of this particular company.

The PRESIDING OFFICER. The Chair does not understand that the question of whether or not Mr. Watson's claim was an exorbitant one can elucidate the issue at all.

Mr. SIMPSON. That is one of the very contentions that is made here, and that is a contention in regard to which we had a very considerable argument at length the other day, as the Presiding Officer may remember. The contention of the managers is that Mr. Watson was directed in presenting his claim to

the Delaware, Lackawanna & Western Railroad Co. to claim only \$100,000, but that, in point of fact, he presented a claim for a very considerably larger amount, and that the amount above the amount which he was originally directed to present was to be divided up in the way that is stated in the testimony, without referring further to it here.

The purpose of this evidence is to show that that claim was made up in fact from the figures which appear in the letter which the managers themselves offered in evidence, in order to avoid the contention that it was then an exorbitant claim, in the way which the managers stated.

The PRESIDING OFFICER. Has counsel finished?

Mr. SIMPSON. Yes, sir; I have finished.

The PRESIDING OFFICER. The Chair did not understand that the contention was as to the exorbitancy of the demand, but as to the difference between the amount agreed upon and the amount which the lawyer afterwards demanded. The Chair does not think it relevant to this issue.

Mr. SIMPSON. Of course, sir, if the managers take the view that the Chair does upon that main question, then this question would not be admissible at all and would not be thought of, and if that is a matter disclaimed, of course, I am content and do not wish to ask this witness any question.

The PRESIDING OFFICER. The Chair can not rule on anything except the testimony. The Chair does not recall any testimony to the effect of any issue being raised as to whether or not \$161,000 was, in fact, more than the party was entitled to receive. The previous testimony was as to the discrepancy between the amount which was originally agreed upon as that to be demanded and that which was ultimately demanded.

Mr. SIMPSON. It is unfortunate, perhaps, that counsel understood it differently from the way the Chair does. If that is the situation, of course this witness ought not to be called.

Mr. WORTHINGTON. Mr. President, excuse me a moment; I was out of the Chamber at the time this question was asked.

The PRESIDING OFFICER. The Chair has no knowledge as to the purpose of the managers. The Chair was simply going on what evidence has been adduced.

Mr. SIMPSON. I understand the Chair's position exactly, but I want to avoid argument if I can when the final argument comes in this case. It will be long enough, in all conscience, even then.

Mr. WORTHINGTON. Mr. President, may I add one word to what has been said? We are here in the very embarrassing position of having this testimony given against Mr. Watson, when he is, as I think everybody understands, on his deathbed, and it is impossible even to communicate with him. It does seem to me that if we can show, as we offer to show, that the reduction per ton which was claimed on the part of the Bolands amounted to \$161,000, it would be a very important piece of circumstantial evidence which the Senate ought to have for the purpose of considering its weight along with the other evidence. Of course, I recognize the fact that a man may have a claim of \$300,000 or \$400,000 against somebody and be willing to compromise it for \$100,000, but when it is denied that there was any such difference and, as we contend, that there is no truth in the statement, it seems to me the Senate ought to have the information as to what the facts are out of which the claim grew.

There is in evidence, I think, a letter to which Mr. Simpson was referring as I was coming into the Chamber, from Mr. Phillips to Mr. Loomis, dated in September, in which he says he has seen Mr. Watson and the claim which Mr. Watson has obtained from the Bolands is a claim for 43 cents a ton for 376,000 tons of coal which they had shipped. It seems to me we ought to be permitted to show that that was a fact so as to indicate that Watson got these figures immediately from the Bolands and could not have got them anywhere else. It is not conclusive one way or the other, but in the situation in which we are placed, where Mr. Watson is as incapable of being used as a witness here as if he were in his grave, that fact ought to be known to the Senate.

The PRESIDING OFFICER. The question is whether or not the issue can properly be raised and determined in this case as to the output of the Marian Coal Co. If so, it could be gone into fully, just as fully as we have gone into the question of the contents of the culm dump, and there would be no end to it. If the witness is authorized to give his testimony as to what the output was, the managers will have a right to join issue on that, and to go just as fully into that question as we have gone into the question of the contents of the culm bank, which would be manifestly improper; and if it is improper to go into it fully, it is improper to go into it at all. The Chair excludes the evidence.

Mr. SIMPSON. There is no other question we want to ask this witness, then.

Mr. Manager WEBB. The witness may be excused, so far as we are concerned.

The PRESIDING OFFICER. The witness is finally discharged.

TESTIMONY OF MISS MARY F. BOLAND.

Miss Mary F. Boland, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) You are the niece of William P. Boland and Christopher Boland, are you?—A. Yes, sir.

Q. And have been a stenographer, I believe, in William P. Boland's office for some years?—A. Yes, sir.

Q. Were you there in September, 1911?—A. Yes, sir.

Q. I will ask you whether or not on or about the 18th day of September, 1911, Mr. Edward J. Williams in that office made the following statement in substance—

Mr. Manager WEBB. What page is that?

Mr. WORTHINGTON. I am looking at the page in the proceedings of the Judiciary Committee for the purpose of getting those notes.

Mr. SIMPSON. About page 1087.

Mr. Manager FLOYD. We object to any such statement, Mr. President.

The PRESIDING OFFICER. What is the question?

Mr. WORTHINGTON. When Mr. Williams was on the stand he testified that after his visit to Capt. May on the 31st of March, when he took that letter from Judge Archbald, which is in evidence, he went back at once to Judge Archbald, and that while there on Judge Archbald's desk he saw a paper, which he has referred to as a brief and sometimes as a trial list, upon which there was the word "lighterage," and then that the conversation followed, which the Chair will remember.

It has already appeared that that lighterage case was not in the Commerce Court until the middle of the month of April, and also that the trial list on which it appeared was made up about the middle of the month of September following, after Judge Archbald's interview with Mr. Brownell and after Capt. May had given the paper here, which is called an option, dated the 30th day of August, 1911.

Now, I propose to show that it is a mistake entirely of dates on the part of Mr. Williams as to that, and to show that he appeared in the office of Mr. William P. Boland first on the 18th of September, and then on the 28th of September, and then said that he had then just seen that paper; so as to show that if this conversation did occur and this thing happened, it had no possible effect upon what is in dispute here about Capt. May's action.

I laid the foundation by asking Mr. Williams the question when he was on the stand.

The PRESIDING OFFICER. Does the manager desire to say anything on the subject?

Mr. Manager FLOYD. Mr. President, our objection to that is this: That they are attempting to contradict Mr. Williams, not by any fact within the knowledge of this witness, but by proving by this witness that at some time Mr. Williams came in there and had some conversation which she, as a stenographer, noted in her notebook. We do not object to his asking this witness about any facts within her knowledge that may contradict Mr. Williams; but it might be that the first conversation was never noted; it might be that he had a dozen conversations on the same subject, and that some subsequent conversation was noted. So we object to it as hearsay and as not tending to contradict the proposition by any knowledge within the mind of this witness referred to by counsel for the respondent.

The PRESIDING OFFICER. The Reporter will please read the question.

The Reporter read as follows:

I will ask you whether or not on or about the 18th day of September, 1911, Mr. Edward J. Williams, in that office, made the following statement, in substance.

The PRESIDING OFFICER. The Chair does not pass on the question whether or not the substance of the conversation can be read, but the Chair thinks it is admissible to prove what Mr. Williams then said. The objection of counsel is a legitimate argument as to the weight of it, but it does not affect the question of its admissibility.

Q. (By Mr. WORTHINGTON.) Then, Miss Boland, I will ask you whether on or about the 18th day of September, in Mr. William P. Boland's office in Scranton, Mr. E. J. Williams said in your hearing, "I was in this morning"; that he had seen the judge, Judge Archbald, and he showed him a brief he was preparing for the Erie Railroad Co.?—A. My recollection is that he did tell me that.

Q. I beg your pardon.—A. My recollection is that he did tell me that.

Q. I will ask you whether or not on the 28th of September, 1911, Mr. E. J. Williams was again in the office, and said he was going to the judge's office to look at a brief the judge was preparing for the Erie Railroad Co., and said he would see it that afternoon?—A. Yes, sir.

Q. And whether later in the day he came back and said he saw the brief and that it was about a case against the Erie Railroad Co., about a lighterage charge?—A. Yes, sir.

Q. That happened?—A. Yes, sir.

Q. Now, Miss Boland, did you make note of those conversations at the time, so that you are sure of the date?—A. Yes, sir; I did.

Mr. WORTHINGTON. That is all.

Cross-examination:

Q. (By Mr. Manager WEBB.) Did you make this additional note at the same time—

Mr. WORTHINGTON. I object to that. I have asked the witness everything on the subject of the brief. Miss Boland made a great many notes and, of course, they are not competent evidence in this case, unless they are made competent by something brought out by us. If they can find anything in these notes which refers to the matter concerning which I have asked the witness, that I have not read, I will consider it a part of the evidence introduced by us.

The PRESIDING OFFICER. Was this on the same occasion?

Mr. Manager WEBB. Yes; on the same occasion and on the same visit.

Mr. WORTHINGTON. Oh, that is an entirely different matter.

The PRESIDING OFFICER. Does it relate to the same matter?

Mr. WORTHINGTON. No.

Mr. Manager WEBB. I do not know that I can say that.

The PRESIDING OFFICER. If not, the manager will have to introduce this witness as his own witness. He can only interrogate the witness—and that is the rule the manager himself has invoked—about matters inquired about on direct examination. If the manager desires to inquire further as to the continuance of this conversation, he will have to introduce the witness as his own.

Mr. Manager WEBB. The way I look at it is this: The respondent's counsel has shown about four lines of a notation the stenographer has made. There are three or four more lines—

The PRESIDING OFFICER. If it relates to the same subject matter, the manager has a right to ask the witness about it; but if it does not relate to the same subject matter, then he has not such a right.

Mr. Manager WEBB. It relates to the relationship she noted, or what Mr. Williams said of the relationship, between him and the judge. It is immediately following her notation of the visit to the judge's office to see the brief, and is part of the same conversation—the same minute.

The PRESIDING OFFICER. That would make it admissible whenever the manager recalls the witness. The rule is plain that the counsel can only cross-examine the witness about matters upon which the witness has been interrogated on direct examination.

Mr. WORTHINGTON. Is that all?

Mr. Manager WEBB. Yes; I think that is all.

Mr. WORTHINGTON. Then the witness may be finally discharged.

The PRESIDING OFFICER. No; the witness will not be finally discharged. The witness can retire, subject to call.

Mr. Manager STERLING. I suggest that counsel permit us to make her our witness now, so as to save this young lady from coming back.

Mr. WORTHINGTON. I object to that.

The PRESIDING OFFICER. Counsel for the respondent may proceed with their case.

Mr. REED. Mr. President, may I ask by way of inquiry why the Senate has not now the right to make an order—

The PRESIDING OFFICER. If the Senator from Missouri has any order to propose to the Senate, the Chair will submit it to the Senate. That is the only way it can be brought to the attention of the Senate under the rule.

Mr. REED. Is there a rule which denies a Senator the right to propound an inquiry?

The PRESIDING OFFICER. Except in writing.

Mr. REED. I mean to the Chair. I am not asking the witness a question; I am asking the Chair—

The PRESIDING OFFICER. If it is a question or order,

Mr. REED. Very well; that is what I am inquiring—whether it is not within the power of the Senate to direct by a vote at this time that this witness shall be examined by the managers without requiring her to return at a subsequent time?

The PRESIDING OFFICER. Undoubtedly the Senate has a right to do whatever it sees fit to do.

Mr. REED. Very well.

Mr. WORTHINGTON. Another objection, Mr. President, to what the counsel is about to ask is that it is a matter about which the learned manager—

The PRESIDING OFFICER. It is not now before the Senate.

Mr. WORTHINGTON. Very well. If it is not before the Senate, I will not occupy the time of the Senate.

The PRESIDING OFFICER. The Senator from Missouri [Mr. REED] presents an order, which he asks the Senate now to adopt. It will be read.

The Secretary read as follows:

Ordered, That the witness now on the stand, Miss Mary F. Boland, be at this time interrogated by the managers relative to that part of the conversation sought to be elicited.

Mr. WORTHINGTON. Mr. President, if the order asked for were that the managers be now allowed to make her their own witness, without waiting for their turn, we should say nothing; but that determines the question of the admissibility of the evidence, and certainly the Senate is not going to say whether the evidence shall be admitted before it finds out whether it is competent. The evidence is as to the declaration of Williams with respect to his relations with Judge Archbald.

The PRESIDING OFFICER. The Chair did not understand it to go further than the right of the manager to now examine the witness.

Mr. WORTHINGTON. And not to pass upon the question of whether or not the testimony is competent?

The PRESIDING OFFICER. The Chair does not understand that it includes that question.

Mr. WORTHINGTON. Very well, then.

The PRESIDING OFFICER. What is the pleasure of the Senate; does the Chair hear objection to the adoption of the order? [A pause.] The Chair hears no objection, and the order read will be considered unanimously adopted. Counsel will proceed with the examination.

Q. (By Mr. Manager WEBB.) On September 18, 1911, Mr. Worthington has asked if you made this notation:

E. J. W. was in this morning and said he saw the judge, who showed him a brief he was preparing for the Erie Railroad Co.

I ask you if that is all of that notation as to what Mr. Williams said about the judge?—A. I really could not say without looking at it. I could not recall it now.

Q. We can not hear you.—A. I say I do not recall it just now.

Q. Can you look at your notes and tell—September 18, 1911?—A. Yes, sir. Do you want me to read it?

Q. I will ask you, first, if what Mr. Worthington asked you as to what Mr. Williams said about seeing the brief in the judge's office was all the notation on that day?—A. I just do not remember Mr. Worthington's question. I thought he asked me if Mr. Williams did not tell me that on that day.

Q. Yes.—A. And I answered him "yes, sir."

Q. Will you tell us what the notation is you have on that day that Mr. Worthington asked you about?—A. He asked me about the first part of the notation.

Q. Well, read that first part, then.—A. "E. J. W. was in this morning and said he saw the judge, who showed him a brief he was preparing for the Erie Railroad Co." That is all he asked me about.

Q. That is all Mr. Worthington asked you about?—A. Yes.

Q. I ask you to read, if it is another two lines or more, the remainder of the notation.

Mr. WORTHINGTON. I object, on the ground that it is not at all pertinent to the part of the conversation I have introduced in evidence; on the ground that the managers had their time to offer any evidence they pleased as to the relation between Judge Archbald and Mr. Williams, and they exhausted that subject; and on the further ground that there is no rule of evidence in any court of the United States that makes it competent evidence to prove the relations between A and B by offering evidence as to what A said about it somewhere when B was not present.

The PRESIDING OFFICER. The Chair would undoubtedly hold that to be correct if it was not a part of the same conversation. If it is a part of the same conversation, the Chair would consider it competent.

Mr. OLIVER rose.

The PRESIDING OFFICER. Does the Senator desire to propound a question before the other question is answered?

Mr. OLIVER. I think it is proper that it should be propounded now. It is something that occurs to me.

The PRESIDING OFFICER. The Senator from Pennsylvania submits a question which will be propounded to the witness.

The Secretary read as follows:

Are you reading from your original notes or from a transcript?

The WITNESS. From a transcript. Do you want me to read from the notes now?

Q. (By Mr. Manager WEBB.) Have you your original notes with you now?—A. Yes, sir.

Q. Please read from your original notes the conversation with Mr. Williams which you noted.

Mr. WORTHINGTON. I am objecting to them.

The PRESIDING OFFICER. Yes. Wait a moment.

Mr. WORTHINGTON. Does the Chair rule that because it was said in the same conversation it may be read, no matter what it relates to?

The PRESIDING OFFICER. Yes; if it is related in any manner to this matter. Of course if it relates to a matter entirely foreign to the subject it would not be admissible.

Mr. WORTHINGTON. The Chair has not been advised what it is. How can the Chair rule upon the question whether it is a part of the same subject matter when the Chair has not heard what it is? It is a statement that Mr. Williams was said to have made as to the relation between him and Judge Archbald. Does the Chair hold it is admissible?

The PRESIDING OFFICER. Yes. The Chair thinks it is sufficiently cognate to make it a part of the conversation.

Q. (By Mr. Manager WEBB.) Read the note.—A. The whole note?

Q. Yes.—A. "E. J. W. called this morning. Said he talked with Judge A. He showed him a brief he was preparing for the Erie Railroad Co. He said the judge would tell him most anything. He has no confidence in John Henry Jones."

Mr. Manager STERLING. Some of the Senators did not hear the witness.

The PRESIDING OFFICER. When the witness is through the Chair will direct the Reporter to read it to the Senate.

Mr. Manager STERLING. It is suggested that the clerk read from the transcript.

Mr. Manager WEBB. I would like to have it read so that the Senate can hear it.

The PRESIDING OFFICER. The Chair has just stated that that would be done.

Mr. Manager STERLING. Excuse me; I did not hear it.

The Reporter read the answer, as follows:

E. J. W. called this morning. Said he talked with Judge A. He showed him a brief he was preparing for the Erie Railroad Co. He said the judge would tell him most anything. He has no confidence in John Henry Jones.

Q. (By Mr. Manager WEBB.) Miss Boland, do you remember anything about writing the contract in which the words "silent party" were used?—A. Yes, sir.

Mr. WORTHINGTON. I object to that. That was all gone into—about that silent-party paper—through W. P. Boland and Mr. Pryor. Are we to reopen the whole case?

The PRESIDING OFFICER. The Chair does not know what the question is to be. The Senate has ordered that this witness be interrogated in chief by the managers. Of course, the question of the admissibility of any evidence is open under the understanding at that time. But unless the question is proposed to elicit evidence that is not properly admissible, the Chair will hold that the manager may proceed.

Q. (By Mr. Manager WEBB.) Do you remember drawing a contract dated September 5, 1911, signed by E. J. Williams, to W. P. Boland and a silent party?—A. Yes, sir.

Mr. WORTHINGTON. I object. All about that silent-party paper was asked of Mr. W. P. Boland and of Mr. Pryor, who was examined as a witness, and Miss Mary Boland was here at the time under subpoena of the managers and was not called and asked about that paper.

I submit that under such circumstances, unless there be some extraordinary and good reason for it, the case ought not now to be reopened for the purpose of starting the trial over again. Of course, it is a matter entirely within the discretion of the Senate, as it is of any court, to hear evidence at any stage of the case; but I have heard no reason why the managers, who knew all about the connection of the witness with reference to that paper, when they were putting in their case, before we were called upon to reply, did not examine her then.

The PRESIDING OFFICER. Has counsel finished?

Mr. WORTHINGTON. Yes, sir.

The PRESIDING OFFICER. This particular contract has been inquired about by the respondent, and evidence has been introduced in response to the evidence introduced by the

managers. The Chair can not tell what question is going to be asked by managers; but witnesses on the part of the respondent have been asked as to this contract.

Mr. WORTHINGTON. It is my recollection and that of my associates that we have not introduced a particle of evidence about the "silent party" contract.

Mr. Manager WEBB. You asked Mr. E. J. Williams about it, and brought out the response that he did not know anything about it.

Mr. WORTHINGTON. Oh, that was on cross-examination.

Mr. Manager WEBB. Certainly.

Mr. WORTHINGTON. Mr. Williams is not our witness; he is the managers' witness.

Mr. Manager WEBB. We disclaim him.

Mr. WORTHINGTON. You disclaim him? I did not know whether the remark was intended for me or for the Senate.

Mr. McCUMBER. Mr. President, I would like to ask the Chair to have the order which was just adopted by the Senate read again to see whether the case was opened simply for that subject matter or whether it was opened up for the whole case.

The PRESIDING OFFICER. Yes. The attention of the Chair has been called to the wording of the order. The Chair thinks the Senator from North Dakota is right in thinking that the order extended only to the notation made of the conversation at the particular time referred to.

Mr. Manager WEBB. Yes; I think that is true. My purpose was simply to ask this witness one or two questions about this contract, and finally dismiss her, without having to call her in rebuttal.

The PRESIDING OFFICER. Consequently the witness will not now be examined upon any other matter.

Mr. WORTHINGTON. Is the witness to be retained? She is anxious to get away, and I ask on her account.

Mr. Manager WEBB. Yes; we do not excuse the witness at present.

The PRESIDING OFFICER. The witness is temporarily excused.

TESTIMONY OF JAMES E. HECKEL.

James E. Heckel, being duly sworn, was examined, and testified as follows:

Q. (By Mr. WORTHINGTON.) What is your full name?—A. James E. Heckel.

Q. Where do you live?—A. Scranton, Pa.

Q. What is your business?—A. Manufacturing.

Q. Manufacturing what?—A. Brass; mine and mill supplies.

Q. Have you any connection with a family known here as the Everharts?—A. I have.

Q. In a brief way what is your relation to that family?—A. Administrator.

Q. Of whom?—A. Five twenty-fourths interest of the James Everhart heirs.

Q. And as such administrator have you at any time set up a claim to an interest in the Katydid culm dump near Moosic, Pa.?—A. I have.

Q. I wish you would look at "U. S. S. Exhibit E" in this case, a letter dated April 11, 1912, addressed to Capt. May of the Hillside Coal & Iron Co., and purporting to be signed by you as administrator; and I ask you whether that is your signature?—A. (After examination.) It is.

Q. Did you send that notice?—A. I did.

Q. I also show you another exhibit, "U. S. S. Exhibit P," in this case, being a letter of the same date, addressed to Robertson & Law, and purporting to be signed by you, and ask you if that is your signature?—A. (After examination.) That is.

Q. Will you tell us under what circumstances you sent those notices to Robertson & Law?—A. To protect the five twenty-fourths interest that I represented in the Katydid dump.

Q. Were these notices mailed on the day they are dated?—A. They were mailed, I think, on the day they are dated.

Q. Why did you send those notices on that particular day? How did it happen?—A. Happen? On consultation with my bookkeeper, Mr. Holden, and myself we thought it was best to send them—not just at that time, but it happened to be that time—April 11.

Q. I wish you would tell us fully—because there is some question made here, I understand, about the honesty of these notices—how they happened to be sent on that day.—A. As a matter of business we sent the notices.

Q. But what brought the subject to your attention at that time?—A. A consultation with Mr. Holden.

Q. Who is Mr. Holden?—A. C. P. Holden, of Boston, Mass.

Q. Who is he, and what is his connection with this business?—A. He represents a one twenty-fourth interest.

Q. Of the Everhart heirs?—A. His wife.

Q. His wife is one of the Everhart heirs?—A. Yes.
Q. Did you see him the day these letters were written?—A. I saw him that day.

Q. Where?—A. In the office and at the Delaware, Lackawanna & Western depot in Scranton.

Q. In what office?—A. My office.

Q. What took place between you and him that resulted in the sending of these notices?—A. We thought it best to send the notices to the different parties who were selling the dump.

Q. What was said about the sale of the dump or the sale that was about to be made?—A. In what way?

Q. Well, you referred to selling the dump. I want to know what sale was talked about?—A. A sale of the Katydid dump on lot 46.

Q. The sale by whom?—A. By the Hillside and Robertson & Law.

Q. It was Mr. Holden, then, coming to your office that brought the matter to your attention at that time, was it?—A. He brought the matter to my attention then.

Q. At that time what did you know, if anything, of the investigation that was soon afterwards made public in regard to the conduct of Judge Archbald?—A. At that time, nothing; it had not come out then.

Q. When did you first hear in any way of the charges against Judge Archbald?—A. That was a month later, I think, and only by the papers.

Q. Only by the papers?—A. Only by the papers.

Q. In what paper did you see it?—A. I think in the Scranton Tribune. It was in all the papers.

Q. Are you able to say, then, that when it first appeared in the Scranton papers was when you first learned about it?—A. That was about the first.

Q. About the time of these notices?—A. I could not give the exact date, but about that time. It was about a month after this notice was given.

Mr. Manager STERLING. We object to all this testimony. It can not possibly be material in this case. No one on this side of the case has intimated that he ever knew anything about it.

Mr. WORTHINGTON. With that disclaimer, I have no further question to ask this witness on that subject.

Q. (By Mr. Manager STERLING.) What is your name?

Mr. WORTHINGTON. But on another subject.

Mr. Manager STERLING. Excuse me.

Q. (By Mr. WORTHINGTON.) Did you have any dealings with Judge Archbald himself about this Katydid culm dump or your interest in it?—A. I did.

Q. Was that before or after these letters which I have just called your attention to were written?—A. Before.

Q. How long before?—A. Four months.

Q. What did you have to do with Judge Archbald about that Katydid dump or your interest in it?—A. He inquired of the heirs of that interest, who they were, their names, and addresses.

Q. Did he make that inquiry of you?—A. He did.

Q. Did he tell you why he was making the inquiry?—A. In order to purchase the interest.

Q. Did he make any offer in reference to the interest?—A. There was no amount decided upon.

Q. Did he say why he was making those inquiries, why he wanted to get that information?—A. No, sir; not just exactly.

Q. Just what did he say?—A. Well, what did he say?

Q. Yes; if you remember?—A. I think in order to buy the Katydid dump. I think so.

Q. Now, when he was making that proposition to you to buy the Katydid dump and if he could get the interest of the Everhart heirs, what, if anything, did he say about keeping quiet the fact that he was making this offer or having the conversation?—A. He did not say anything about keeping quiet.

Q. Was any suggestion of any kind made not to speak about it to anybody?—A. Not that I know of.

Q. Do you know Capt. May?—A. I do.

Mr. WORTHINGTON. I do not see any necessity of pursuing that in view of the disclaimer made by the managers a moment ago.

Cross-examination:

Q. (By Mr. Manager STERLING.) Your name is Heckel?—A. Yes, sir.

Q. You are administrator of the Everhart estate?—A. Of the Everhart estate.

Q. And Mr. Holden's wife is one of the Everhart heirs?—A. Yes, sir.

Q. And you and he talked about sending these notices. That was immediately after Holden had been down to Scranton?—A. At the same time he was there.

Q. How?—A. We talked about these notices the same day they were sent.

Q. Do you live at Scranton?

Mr. WORTHINGTON. I do wish to ask the witness about the matter I started to ask him. Would the manager prefer that I should do it now or that I should wait until he gets through?

Mr. Manager STERLING. I will wait.

Q. (By Mr. WORTHINGTON.) You say you know Capt. May?—A. I do.

Q. Did you have any communication with him of any kind before sending out these notices?—A. None whatever.

Q. (By Mr. Manager STERLING.) But Mr. Holden did have communication with him, did he not?—A. I do not know.

Q. Did not Holden come to the office and tell you he had just been to Capt. May's office, and Capt. May told him they were about to sell this property?—A. He did not.

Q. Who was it first introduced the subject of sending these notices?—A. I think Holden.

Q. Who told you that the sale was pending?—A. The sale was pending, I learned from Judge Archbald.

Q. How is that?—A. I learned the sale was pending from Judge Archbald.

Q. When did you learn it was pending?—A. I think the last of December.

Q. And it was on the 11th of April—A. That the notices were given.

Q. And it was on the 11th of April that Holden went to May's office?—A. I do not know if he did.

Q. Do you know whether May sent for Holden to come down?—A. I do not.

Q. You do not know?—A. I do not.

Q. But you do know he was down there and talked with May?—A. I do not know.

Q. Did not Holden tell you he had been to May's office and May had talked about the contract that was then on his desk for the sale of this property to Bradley?—A. He did not.

Q. He did not tell you about that?—A. No, sir.

Q. How did you happen to write on the 11th, the day that contract was sent out?—A. By the consultation we had.

Q. You had the consultation on that day?—A. Yes; on the—

Q. And the consultation was just after Holden's visit to May's office?—A. If it was, I do not know anything about it.

Q. Are you sure Holden did not tell you he had been to May's office?—A. I am sure he did not.

Q. And May had told him that this was about to be consummated, and had the contract on his table?—A. He did not tell me that about his visit in the office.

Mr. Manager STERLING. That is all.

Q. (By Mr. WORTHINGTON.) Do you know anything about Mr. Holden's condition of health now?—A. I understand he is very sick.

Q. He lives in Boston?—A. He lives in Boston.

Mr. WORTHINGTON. That is all.

Mr. Manager CLAYTON. Mr. President, I move to exclude that as irrelevant testimony, which has no bearing on this case.

The PRESIDING OFFICER. This testimony, if objected to, must go out.

Mr. WORTHINGTON. I wish to show why the witness is not here to-day. He has been subpoenaed.

The PRESIDING OFFICER. That is not the way to show it.

Mr. WORTHINGTON. Very well; if the managers object, we will try to send evidential evidence.

The PRESIDING OFFICER. The witness may retire. He is finally excused.

TESTIMONY OF WALTER S. BEVAN.

Walter S. Bevan appeared, and having been duly sworn was examined, and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Bevan, give your full name.—A. Walter S. Bevan.

Q. Where do you live?—A. Scranton, Pa.

Q. What is your business?—A. Practicing attorney.

Q. Have you any relations with what are known as the Everhart heirs?—A. I represented Mr. Charles P. Holden, who is married to one of the Everhart heirs.

Q. You represented him as his attorney?—A. Yes, sir.

Q. Look at this paper [presenting paper], which is in evidence here, "U. S. S. Exhibit F," a letter, dated April 11, 1912, to Capt. May, purporting to be sent by you as attorney for Charles P. Holden. State whether that is your signature.—A. (Examining.) It is.

Q. Did you sign that letter and send it on the day it bears date?—A. I did.

Q. Why?—A. At the request of Mr. Charles P. Holden.

Q. Did he make any explanation as to the circumstances which he thought required the notice to be sent?—A. He told me that he had learned that the Hillside and the other interests in the Katydid culm bank were about to be sold. He said he was in a hurry to go to New York, and asked me if I would not write these letters to Capt. May and Robertson and Law.

Q. Please look at "U. S. S. Exhibit O," in this case [presenting paper], and tell me whether that is a letter which you sent to Robertson & Law at the same time and with your signature as attorney?—A. (Examining paper.) It is.

Q. At that time what, if anything, did you know about the investigation or charges against Judge Archbald which have resulted in this trial?

Mr. Manager STERLING. Mr. President, we object to that as wholly immaterial.

Mr. WORTHINGTON. You do not claim that he had an interest?

Mr. Manager STERLING. We do not claim it, and we never have claimed it.

Mr. WORTHINGTON. Very well. We are getting wiser as we go along, Mr. President.

Mr. Manager STERLING. Is that all you want to ask the witness?

Mr. WORTHINGTON. That is all.

Cross-examination:

Q. (By Mr. Manager STERLING.) You say Mr. Holden first told you about this sale?—A. Yes, sir.

Q. He said he had just been down to May's office, and May told him about the closed deal with Bradley?—A. No; he did not say that.

Q. Where did he say he had learned it?—A. He did not say where he had learned it.

Q. Did you ask him where he had learned it?—A. I did not.

Q. That was on the 11th of April?—A. It was.

Q. Did you learn afterwards that that was the day Holden went down there to May's office?—A. I did not. I did not know he had been there.

Q. Did you learn that May had sent for Holden and told him that they were about to sell and he had better get these notices in?—A. I did not.

Mr. Manager STERLING. That is all.

The PRESIDING OFFICER. The witness is finally excused.

TESTIMONY OF WILLIAM A. MAY—CONTINUED.

William A. May was recalled.

Q. (By Mr. WORTHINGTON.) Capt. May, is it a fact that you turned over some papers relating to this matter to the managers when you were here before the Judiciary Committee?—A. I did.

Mr. WORTHINGTON (to the managers). Have you the papers now, gentlemen?

Mr. Manager CLAYTON. Will you indicate them, Mr. Worthington?

Mr. WORTHINGTON. I want all the papers that were turned over by Capt. May that relate to this matter of the Katydid dump.

Mr. Manager CLAYTON. Some of the papers have already been introduced in evidence.

Mr. WORTHINGTON. The blue print of the Katydid dump is the particular paper I was looking for.

Mr. Manager CLAYTON. We have just found that. I would be glad to oblige you by giving all of them to you. Will you indicate them? We have so many papers turned over to us that I do not recall just what papers Mr. May turned over.

Mr. WORTHINGTON (examining papers). This is a very large Katydid dump according to this map. It begins at Maine and ends in Missouri. I think it must be the wrong production.

Mr. Manager CLAYTON. I see this is a topographical map.

Mr. Manager FLOYD (handing papers to Mr. Worthington). See if these are the papers.

Mr. WORTHINGTON (examining). These have been offered in evidence, have they not?

Mr. Manager CLAYTON. Mr. President, we have looked through the papers here, and I think possibly the particular papers the counsel has referred to may be at the room of the Committee on the Judiciary. I have sent word to ascertain whether they are there or not, and as soon as I can get them, if I have them, they shall be produced.

The PRESIDING OFFICER. Can counsel proceed with other parts of the examination? The managers have indicated that they purpose to produce the papers if possible.

Mr. WORTHINGTON. It would be somewhat difficult, Mr. President. I probably can supply the place with a paper in the possession of another witness, Mr. President.

(Robert W. Archbald, jr., left the Chamber and, returning, handed a paper to Mr. Worthington.)

Q. (By Mr. WORTHINGTON.) I wish you would look at this paper [presenting paper], which purports to be a map of the Katydid culm bank, and tell me if you recognize that and know whence it comes?—A. (Examining.) That is a sketch of the Katydid dump, I presume, from which the blue print was made that they are searching for.

Q. This is the original, then, from which that blue print was made?—A. So far as I know, it is the original sketch.

Q. Do you know who made that paper?—A. It was found among Mr. Merriman's papers, the man who made the survey of the dump.

Mr. Manager WEBB. The witness is not answering the question.

Mr. WORTHINGTON. He says it was found among the papers of Mr. Merriman. [To the witness:] Mr. Merriman was what?—A. He was surveyor for the land department.

Q. Of the Hillside Coal & Iron Co.?—A. Yes, sir; of the Hillside Coal & Iron Co.

Q. He is now dead?—A. He is now dead.

Q. It was found among the papers in his office?—A. Yes; among the papers in his office.

Mr. Manager CLAYTON. May I not inquire of counsel whether the document now before the witness is not the original of the document of which the committee was furnished a copy?

Mr. WORTHINGTON. Yes; we have stated that.

Mr. Manager CLAYTON. You had that in your possession when you asked for the copy?

Mr. MARTIN. No.

Mr. WORTHINGTON. I am informed, however, I will say in reply to the suggestion my respected friend has just made, that there are notations on that blue print which was given to the managers which are not on the original. We would like to have it.

Mr. Manager CLAYTON. I think we will be able to produce the copy in a few moments.

Mr. WORTHINGTON. I want to have that offered in evidence.

Mr. Manager WEBB. Mr. President, I believe we will object unless this witness knows who made it.

Q. (By Mr. WORTHINGTON.) Did Mr. Merriman at any time for you make an investigation as to the Katydid dump?

The PRESIDING OFFICER. Wait a moment.

Mr. WORTHINGTON. I am not going on with the paper, but I want to lay a further foundation for the introduction of it.

The PRESIDING OFFICER. The counsel for the respondent will proceed.

The WITNESS. What was the question?

Q. (By Mr. WORTHINGTON.) I ask you whether Mr. Merriman at any time for you or under your directions made an investigation of the Katydid dump to ascertain its cubical contents?—A. Mr. Merriman made an investigation at my direction.

Q. And did he make any report to you?—A. The only report was the blue print that—

Mr. Manager STERLING. We object.

The WITNESS. We made no—

The PRESIDING OFFICER. Wait a moment. What is the objection?

Mr. Manager STERLING. We do not object to that statement, but the witness was going on to state what the report was, as I understood it. That is what I object to.

The PRESIDING OFFICER. The Chair does not understand that the objection relates to the testimony as far as it has been elicited.

Mr. WORTHINGTON. The fact about it, as I understand it, Mr. President, is that the blue print was what the official gave to his superior, Capt. May, and Capt. May says he has turned that paper over to the managers.

The PRESIDING OFFICER. That is evidence already in.

Mr. WORTHINGTON. And he finds the original, from which the official made the blue print. The managers said they would find the blue print, and when they have not found it they object to our using that which had been made.

Mr. Manager STERLING. We have not objected. We do not know the purport. We have just objected to the witness giving this report. That is all we objected to.

Mr. WORTHINGTON. The purpose is to show the amount of material in the dump which was reported at that time by this official of the Hillside Coal & Iron Co., who is now dead, and that investigation as has already appeared we made in connection with the proposal to sell this Katydid dump to the Du Pont Powder Co. [To the witness:] I am right about that, Capt. May, am I not?

The WITNESS. Excuse me, I did not get your question.

Q. (By Mr. WORTHINGTON.) I say this examination and report was made with reference to this proposed sale to Judge Archbald and Mr. Williams. That is true, is it, Capt. May?—A. It was.

Q. Did you see this paper at the time, after his investigation?—A. No, sir; I did not.

Q. What he gave to you was a blue print?—A. It was a blue print.

Q. Was the blue print a copy of this?

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The Chair thinks that the witness can state whether it is a copy of that or not.

Mr. WORTHINGTON. Let me make sure, Mr. President. [To the witness:] That blue print, you say, you did turn over to the managers?—A. It was in my file that I turned over to the managers.

Mr. WORTHINGTON. We seem to be blocked. Evidently we have traced the paper into the hands of the managers and the managers say that they have it not, and they object to our using the original.

The PRESIDING OFFICER. The managers expect to produce the copy in a short time.

Mr. WORTHINGTON. I understand. I am not suggesting any concealment of anything on the part of the managers, of course. I should say we gave notice to the managers yesterday that we understood the papers had been turned over to them and that we would like to have them to-day.

Mr. Manager CLAYTON. Counsel did not specify yesterday what particular papers, but spoke in a general way, and we loaded down one messenger with every conceivable paper that I thought related to the subject and brought them here. Unfortunately, the particular paper now specified is not in the bundle that we have.

The PRESIDING OFFICER. Can the counsel for the respondent proceed further without the production of the paper?

Q. (By Mr. WORTHINGTON.) When you were here before you testified as to the information you had showing 85,000 tons of material in this dump. Where did you get that?—A. I did not testify that we had 85,000; I testified 80,000.

Q. Eighty thousand; I beg your pardon.—A. The 80,000 tons, that amount, I got from what Mr. Robertson said in his letter. The engineer had made an estimate of about 80,000 tons.

Q. And who was that engineer?—A. The engineer I think he referred to was Yewens.

Q. So you only know as to that what Mr. Robertson and Mr. Yewens reported to him?—A. And Mr. Yewens reported to him.

Q. Your testimony in that regard was based upon hearsay information?—A. It was based upon the information in that letter.

Q. Did Yewens make any report to you?—A. He did not.

Q. Was he in the employ of the Hillside Coal & Iron Co.?—A. He was.

Q. How did he come then to make a report to Robertson and not to you?—A. He did Robertson's work as well as ours.

Q. When you turned this blue print over to the managers were there any other papers attached to it?—A. I turned my file, that I had with me, over to them. I do not know now what papers were in it.

Mr. WORTHINGTON. I think that is as far, Mr. President, as we can proceed with this witness until we learn whether the blue print can be produced.

The PRESIDING OFFICER. Does the counsel for the respondent care to withdraw the witness temporarily and proceed with other matters?

Mr. WORTHINGTON. Yes; Mr. President.

The PRESIDING OFFICER. That being the case, the cross-examination had better be postponed until the witness can again be put upon the stand. He will retire temporarily.

Mr. WORTHINGTON. Capt. May is very anxious to get away.

Mr. Manager STERLING. I have a suggestion to make to counsel which, I believe, will shorten all this matter. I propose that we put in the evidence the report made by the engineer, Rittenhouse; the report made by Mr. Saums, the Du Pont engineer; the report made by Mr. Marion, the Katydid engineer; and the report made by Mr. Yewens, who made the report for Robertson & Law. There are the reports of four engineers. The Rittenhouse report has been ruled out, and I suppose they had better all be ruled out; but I suggest that all four go in together in the record now, if counsel will agree to that.

Mr. WORTHINGTON. I decline to accept that suggestion, Mr. President. The Rittenhouse report was ruled out as a report, but he was allowed to read from it to refresh his recollection, and it practically went in.

I find Capt. May exceedingly anxious to get away to-day, if that paper could be found.

The PRESIDING OFFICER. Possibly within a few moments it can be produced.

Mr. WORTHINGTON. We will proceed with Mr. Saums, whose testimony was interrupted when we adjourned day before yesterday.

Mr. Manager CLAYTON. Mr. President, I have now the papers which the counsel wanted. I deliver them [handing papers to Mr. Worthington]. There is the envelope addressed to Capt. May, with certain writing on it, and here is the blue print I presume you were talking about. In fact, this is the lot of papers that I suppose Capt. May referred to as his file; and they, together with the papers which have already been introduced in evidence, are all the papers that came into the possession of the committee or the managers from Capt. May that I can now recall. I think I may state as a fact that they are all. They are all, to my best recollection.

Q. (By Mr. WORTHINGTON.) Capt. May, I now show you the paper which the managers have found [presenting paper], which purports to be a blue print representing the Katydid culm dump. I ask if that is the paper which your engineer gave to you as indicating, so far as it goes, what he found at the Katydid culm dump?—A. (Examining.) That is the blue print that he turned in to me.

Q. And was that the paper before you and a part of the information upon which you acted?—A. It was.

Q. When you wrote the letter of August 30, stating that you would recommend the sale of your company's interest in that dump for \$4,500?—A. It was.

Mr. WORTHINGTON. I offer that in evidence.

Mr. Manager CLAYTON. Let me see it, please, Mr. Worthington.

Mr. WORTHINGTON. You have had time enough to see it.

Mr. Manager CLAYTON. I know, but it is some time since we examined it critically. Give us the jacket the papers were in.

Mr. Manager STERLING. We object to the introduction of the blue print.

The PRESIDING OFFICER. The Chair will hear from counsel for the respondent, if he desires.

Mr. WORTHINGTON. Mr. President, the claim here is that Capt. May, because of Judge Archbald's position on the Commerce Court, agreed to recommend the sale of this dump for less than it was worth. Is it not competent to show what Capt. May had before him when he said he would make the recommendation, so that the Senate may determine whether it was made in good faith or with a view of giving a benefit to Judge Archbald? So far as article 1 is concerned, this is the gist of the whole matter.

The PRESIDING OFFICER. The counsel is undoubtedly entitled to show by the witness that he made the report or based his action, whatever that might be, upon the fact that he received information from a certain party; but the rule does not go to the extent of saying that that information can be introduced in evidence. If that were the case, any secondary evidence would always be introduced. The fact that some one acted upon that report does not make it evidence any more than the report of any other man would be evidence. It may be a reason why he acted, but that does not go to the extent of saying that the paper itself should be put in evidence.

Mr. WORTHINGTON. Mr. President, if this report had shown that Capt. May was informed by his engineer that this culm dump was of such kind and quality and size that it was worth \$100,000, would it not be competent for the managers to put it in evidence to show that he did not make that recommendation to sell it for \$4,500 in good faith? The mere fact that that report was made upon it helps us in no wise to determine whether Capt. May was acting in good faith or bad faith, unless we know what the information was.

The PRESIDING OFFICER. The Chair does not think that secondary evidence may be gotten in in that way. The only object of the evidence at all is in explanation of why a certain thing was done by a witness, as illustrated by the books as referred to by the Chair on another occasion of this trial. A witness may say that, in consequence of certain information given to him by a certain party, he went to a certain place; but he can not state what that statement was. It would be the introduction of secondary evidence, if he did.

Mr. WORTHINGTON. I think, perhaps, the indication of the Chair prevents me from asking the question in any form, but I should like, in order to make sure of that, to put it in another form. [To the witness.] Capt. May, I will ask you the question in another way, but you will not answer until you find out whether you are permitted to answer it. I want

to ask, when you said in your letter of August 31, 1911, in evidence, to Mr. Williams that you would recommend the sale of the interest of your company in the Katydid culm dump for \$4,500, what was your knowledge at that time as to quantity of material in that dump?

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The Chair thinks counsel can ask the witness whether or not he knew it of his own knowledge, but secondary evidence can not be gotten in by that form of question.

Q. (By Mr. WORTHINGTON.) Well, captain, what did you know of your own knowledge about the Katydid dump?—A. I had seen the dump. I had never made a measurement of it. I had seen it a number of times, but took no measurement of any kind.

Q. You had made no measurement of any kind?—A. No, sir.

Q. Had you formed, from your examination of it, any estimate as to the quantity of material in it?—A. I did not.

Q. None at all?—A. No, sir.

Q. When you made that recommendation, then, you were guided entirely by information you had received from your engineers, were you?—A. Yes, sir.

Q. And the question of whether you made it in good faith or bad faith depends upon that information?

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. What is the question?

Mr. WORTHINGTON. That is a question of law, perhaps. If that is the ruling of the Chair, and the Senate does not think it of sufficient importance—

The PRESIDING OFFICER. There are four reports here, and it is sought to introduce one of them as evidence simply because it has been seen by this witness.

Mr. WORTHINGTON. Mr. President, I am not concerned about what was in that dump, but I am concerned about what Capt. May thought was in it and what his information was when he agreed—

The PRESIDING OFFICER. The witness has testified fully as to that, that he did not act upon his own personal knowledge.

Mr. WORTHINGTON. I do not know of anything else I can ask this witness, Mr. President, under the rule which has been laid down.

Mr. OLIVER. Mr. President, is it in order to submit an order that this evidence be admitted?

The PRESIDING OFFICER. It is.

Mr. OLIVER. I submit the order, which I send to the desk.

The PRESIDING OFFICER. If it is the desire of the Senate that the question be submitted, it is not necessary to pass an order. The Chair will submit it to the Senate.

Mr. OLIVER. Then I suggest that the question desired to be asked by the counsel for the respondent be submitted to the Senate.

The PRESIDING OFFICER. The Chair will submit to the Senate, at the request of the Senator from Pennsylvania, the question whether or not the paper now offered in evidence shall be admissible in evidence.

Mr. OLIVER. It is only, Mr. President, for the purpose of showing the basis upon which he made his offer of \$4,500.

The PRESIDING OFFICER. That is the right of the Senate, and the Chair will always submit a question when any Senator so desires.

Mr. LODGE. I desire to make an inquiry. Is this one of the four reports?

The PRESIDING OFFICER. It is one.

Mr. LODGE. Have all the reports been admitted?

The PRESIDING OFFICER. None has been.

Mr. OLIVER. But, Mr. President, if I may be allowed to state, as I understand this is the only report that was submitted to the—

The PRESIDING OFFICER. It is not in order to discuss the question.

Mr. WORTHINGTON. May I state to the Senate what is the purpose of this question?

The PRESIDING OFFICER. Yes.

Mr. WORTHINGTON. The purpose of this question is to have the Senate see the only report which was before this witness, which was the report of his proper officer, made after investigation, under his direction, for the purpose of letting him know what this dump was worth before he decided what he would ask for it. The Rittenhouse report, which has been referred to, was made long afterwards by instructions of somebody representing the Department of Justice. No one of them was before him or known to him at the time that he made this recommendation or agreed to make a recommendation. We offer the report which was made to him by his engineer for the

purposes of showing that he acted honestly, in good faith, when he made the recommendation that he did.

It will be remembered—and the Senate must remember this in order to pass intelligently upon the question—that when Judge Archbald wrote his letter of the 31st of March to Capt. May, asking him whether the dump would be sold; and if so, at what figure, Capt. May has already testified that he then directed an investigation to be made so that he might know what the dump was worth. This is the result of that examination accordingly made and submitted to Capt. May by his officer. After receiving that, he then decided what in his mind was a proper sum to ask for the dump. The other reports have nothing to do with the question whether in making that recommendation or agreeing to make it he acted in good faith or in bad faith.

Mr. Manager STERLING. I trust I may be permitted to say a word.

The PRESIDING OFFICER. The manager will proceed.

Mr. Manager STERLING. Counsel say that the question is whether Mr. May acted in good faith. The question is not whether Mr. May acted in good faith, but, although we have said all along whether he was paying less or more than the dump was worth was not material, if we go into the question of the value of the dump, the question is what Judge Archbald thought about it, whether, by committing the offense which is charged in the article—that is, unduly influencing these railroad companies to sell the dump—he expected to make a profit out of it. It is not a question as to what Mr. May thought about it at all; the only question is, if we are going into the value of the dump, whether Judge Archbald thought he was getting it for less than it was worth. Mr. May is not on trial at all. If there is any question that is important here as to the value of this dump, it is to find out the real value of the dump, and we can best get it from all of these reports.

It was suggested yesterday by counsel on the other side that this Rittenhouse report was manufactured for the purpose of evidence, and it was proven on the witness stand that Mr. Rittenhouse did not know for whom he was making the report or for what purpose he was making it.

I suggest, in all fairness, that if this report goes in, all of these other three reports should also go in. We have made the proposition to let them all go in, and I trust that the Senate will permit the other three reports to go in in the same connection, so that the Senate can see side by side the estimates of these three engineers.

Mr. WORTHINGTON. Mr. President, I do not know what reports the honorable manager is speaking of, except three. So far as the Rittenhouse report is concerned, Mr. Rittenhouse, with his report before him, read into the record its contents, refreshing his recollection by having the report before him.

Mr. Manager STERLING. Then, may I state, the other two?

Mr. WORTHINGTON. Let me finish. Another report was one made by Mr. Saums, who investigated the dump for the purpose of informing the Du Pont Powder Co. as to what it was worth when that company proposed to buy it early in 1909. We have Mr. Saums on the stand now, with this interruption, for the purpose of putting that report in evidence.

The third report is the one which is now before this witness, which we are proposing to put in evidence. If there is any other I do not know what it is.

Mr. Manager STERLING. I merely want to say to the counsel that the other two reports are the report made by Mr. Saums for the Du Pont Powder people when they were about to buy it and the report made by Yewens.

Mr. WORTHINGTON. Where is Yewens's report.

Mr. Manager STERLING. Your witness just testified about it awhile ago. I do not know anything about it.

Mr. WORTHINGTON. Just one moment on this point, please. Perhaps this matter can be settled right here. Capt. May has testified that his officer, Yewens, made an investigation of this dump for Mr. Robertson, and made a report to Mr. Robertson, he being also in the employ of Robertson. That report has not been produced. It is not in evidence and nobody has seen it, so far as I know.

Mr. Manager STERLING. Then, confine it to the other three reports, if that report can not be had.

Mr. WORTHINGTON. I have just stated that the Rittenhouse report is already in evidence. We have Mr. Saums here for the purpose of putting his report in evidence, and had offered it day before yesterday, when the managers asked to examine the report before they passed on the question of whether they would object to it; and this is the third one.

Mr. Manager STERLING. Mr. President, the counsel is entirely mistaken about the Rittenhouse report being in evidence. We offered it, but it was objected to and ruled out.

Mr. WORTHINGTON. As to the material in the dump and the value thereof?

Mr. Manager STERLING. The written report which we are presenting and have here now.

Mr. WORTHINGTON. He made a report on a good many other things besides the value and material of the dump. So far as that is concerned, we have no objection at all to his report. He has already testified fully in regard to it.

Mr. Manager STERLING. Then, what do you say about Mr. Saums's report?

Mr. WORTHINGTON. I had Mr. Saums on the stand for the purpose of putting his report in evidence, but it was objected to by the managers, and the matter held up here the night before last until they could examine the reports.

Mr. Manager STERLING. Then, I understand counsel accepts the proposition to put the Rittenhouse report, the Saums report—that is, the report Saums made after his investigation—and the report of Mr. Merriman in the record.

Mr. WORTHINGTON. If the manager confines himself to the report Rittenhouse made as to the quality and quantity of material in this dump and its value, we consent.

Mr. Manager STERLING. If there is anything else in the report except that we might, on inspection, strike out some of it, but it relates to that matter entirely. It was made for no other purpose than to find the value of the dump.

Mr. WORTHINGTON. I have stated, Mr. President, what we are perfectly willing to do, what we understand is proposed, and what we understand is practically done, that the Rittenhouse report as to the quantity of material in that dump and its value, if it is not in evidence, shall go in evidence. I am about to offer the Saums report in evidence, and had Mr. Saums on the stand for that purpose when interrupted, and this is the third report which we are now offering.

Mr. Manager STERLING. Mr. President, here is the report which Mr. Rittenhouse made. It covers the subject and nothing else. It all goes to the value of the dump, the quantity of coal in it, and the different grades of coal.

Mr. WORTHINGTON. I find, Mr. President, on examination, that a matter which I had supposed was in the Rittenhouse report is not in it; so we have no objection to the whole report going in, but we had supposed that it was already in substance before the Senate.

Mr. Manager STERLING. It is just as he made it.

Mr. WORTHINGTON. Very well.

Mr. Manager STERLING. Then, Mr. Saums's last report and the report of Mr. Merriman—

Mr. WORTHINGTON. I propose to examine Mr. Saums on direct examination and will bring his report in in connection with his testimony.

Mr. Manager STERLING. In order that the Presiding Officer and the Senate may understand our proposition, it will be remembered that Mr. Saums made two reports. One was after he had gone out and stepped the dump and then estimated it. We object to that report. He afterwards measured the dump definitely and tested it mechanically. As to that report, we have no objection.

Mr. WORTHINGTON. Very well; but as to the first report he has already testified, and we were about to prove the second one when the interruption occurred day before yesterday.

The PRESIDING OFFICER. Is it agreed that the four reports shall go in?

Mr. WORTHINGTON. The three reports. There is no fourth report.

Mr. Manager STERLING. Mr. Yewen's report does not seem to be here.

The PRESIDING OFFICER. Then it is agreed that the three reports shall go into the record?

Mr. WORTHINGTON. That is agreed.

Mr. Manager STERLING. It is agreed that those three reports shall be admitted.

Mr. OLIVER. I withdraw the order which I submitted, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania withdraws the order submitted by him, and the three reports will be put into the record.

Mr. Manager STERLING. With the understanding that it does not apply to the first report which Mr. Saums made.

Mr. WORTHINGTON. That is already in evidence.

Mr. Manager STERLING. The report is not in evidence.

Mr. WORTHINGTON. His figures are.

Mr. Manager STERLING. He testified from it, but the report was not submitted as an exhibit.

Mr. WORTHINGTON. Very well. Now, may I have this blue print [exhibiting] marked as an exhibit?

The paper was handed to the Secretary and marked "U. S. S. Exhibit V."

Mr. WORTHINGTON. This map, Mr. President, contains what purport to be the outlines of the Katydid culm dump, with a number of figures which I will not read, and below is the inscription:

Katydid culm dump, near Consol, BR. Avoca, Pa., April 15, 1911. Estimate, 55,000 gross tons (available), exclusive of slush, rock, dirt, etc., of no value, as per Mr. Johnson, inspector.

[To Mr. Manager STERLING.] Do you want to see this?

Mr. Manager STERLING. I want it when I cross-examine.

Mr. Manager CLAYTON (to Mr. Worthington). Are you through with the witness?

Mr. WORTHINGTON. Yes, that is all.

Cross-examination:

Q. (By Mr. Manager STERLING.) Mr. May, you testified before the Judiciary Committee that there were from 80,000 to 85,000 gross tons in this culm dump, did you not?—A. I stated that an engineer made an estimate of 80,000 tons.

Q. You meant Merriman?—A. No.

Q. You did understand, then, that an engineer had estimated it at 80,000 tons?—A. Yes, sir; that was based upon—

Q. What does that mean—80,000 gross tons?

Mr. WORTHINGTON. One moment, Mr. President, the witness was in the midst of answering the question when the manager interrupted him with another.

The PRESIDING OFFICER. The question was answered, and the witness went on as to another matter. The manager desires to interrogate him on that particular line. The witness will have an opportunity before he gets through to state fully anything he wishes.

Mr. WORTHINGTON. I did not think the manager knew the witness was still answering the question.

The PRESIDING OFFICER. No; the witness started on an explanation.

Q. (By Mr. Manager STERLING.) You read the notation on the bottom of this plat marked "Exhibit V," did you not?—A. I did.

Q. And it says "estimate 55,000 gross tons." By "gross tons" did you understand is meant all the material in the bank?—A. I did.

Q. Well, do you not think that has a different meaning here?—A. No; I do not think it has.

Q. All the material in the bank means the rock, the dirt, the slush, the coal, and the slate, does it not?—A. I think he referred to—

Q. I am not asking what he referred to, but in ordinary language, when you speak of gross tons, it means everything in the culm dump, including dirt and everything else?—A. No, sir.

Q. What does it mean?—A. What he meant—

Q. I am not asking you what he meant.

The PRESIDING OFFICER. The witness ought to be permitted to answer.

Mr. Manager STERLING. I did not ask him that question. My question is what does it ordinarily mean?

The WITNESS. It ordinarily means a ton of 2,240 pounds.

Q. And the term "gross material in the bank" includes all of it, does it not?—A. It would include 55,000 tons of material of 2,240 pounds to the ton.

Q. Do you not think it has a different meaning here for this reason? The notation is "Estimate 55,000 gross tons (available)"?—A. No; I do not.

Q. He means that there are 55,000 gross tons of coal, does he not?—A. No; I do not think so.

Q. Then, let us add the next clause, "Exclusive of slush, rock, dirt, etc., of no value."—A. Well, he meant—

Q. Taking that in connection with the "55,000 gross tons (available)" it means that he thought that there were 55,000 gross tons of coal; do you not think so?—A. No, sir.

Q. When you exclude the "slush, rock, dirt, etc., of no value," what else is there left in the dump?—A. Culm.

Q. What is culm?—A. Culm is the material that is made from breaking down the coal.

Q. Well, do they not generally call that slush?—A. No, sir.

Q. So you think that includes everything, then, except what you call the culm? It is fine coal, is it not?—A. Fine coal.

Q. And it is used?—A. It is sized and marketed.

Q. And used and marketed, is it not?—A. Yes.

Q. So you think he means there 55,000 tons, exclusive of everything in the dump, excepting the culm?—A. He means 55,000 tons of culm.

Q. How is that?—A. In my opinion, he means 55,000 tons of culm; that is before it is sized. It is the gross material.

Q. Not including rock?—A. No, sir; not including rock.

Q. Not including dirt?—A. Nor including dirt.

Q. It includes all the coal material?—A. All the coal material.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Did you understand by that that there were 55,000 tons of coal there which could be utilized and sold?—A. Of culm before it was sized.

Q. What percentage of that would be waste? How does it run in these dumps?—A. It runs differently in different dumps. Mr. Johnson's test shows just how much slush there would be in it. They call it that; it is the material that would pass through a three thirty-second inch mesh; that would be waste, and that was included in this.

Q. That was included?—A. Yes.

Q. Mr. Johnson has given us the figures as to what proportion of this 55,000 tons would be material that could be sold?—A. I think that is in evidence.

Q. I know it is. Now, did you talk with Mr. Merriman when he made this report to you?—A. Not particularly. I took his report because we always make our reports in gross—I mean taking the entire culm bank—and I took that as the quantity there.

Q. When you received that, you understood it to mean 55,000 tons of culm?—A. I did.

Q. And not 55,000 tons of coal?

Mr. Manager STERLING. We object. The witness has just said that that meant all coal material in the culm.

Mr. WORTHINGTON. Yes; but I submit, Mr. President, that is not fair to the witness, because, while he says it means culm, he says a large part of that would be waste which would not be available at all. That is what you say, is it not, Capt. May?

A. Yes; that it is culm; but in that culm there would be material that would pass through a three-thirty-second-inch mesh which we could not market. That means the gross amount of culm. I can not make it any plainer than that.

Recross-examination:

Q. (By Mr. Manager STERLING.) But this report of your engineer says 55,000 tons are available. That is what you had before you when you made this offer, is it not—that 55,000 gross tons were available?—A. Of culm; not of marketable material.

Q. What does he mean by "available," Mr. May?—A. Well, I understood that he meant material that could be used.

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. That is all, Capt. May.

The WITNESS. May I be excused?

Mr. WORTHINGTON. So far as we are concerned, we will be very glad to have Capt. May finally discharged.

The PRESIDING OFFICER. Do the managers desire that the witness shall be detained further?

Mr. Manager CLAYTON. The witness may be discharged, Mr. President.

The PRESIDING OFFICER. The witness is finally discharged.

TESTIMONY OF H. W. SAUMS—CONTINUED.

Mr. WORTHINGTON. Now, we should like to have Mr. Saums recalled, if we may.

H. W. Saums, having been previously sworn, was recalled and testified as follows:

Q. (By Mr. WORTHINGTON.) Will you look at this letter, dated February 12, 1909, purporting to bear your signature, and addressed to Mr. Henry Belin, jr., president of the E. I. Du Pont Powder Co.? Is that your signature?—A. (After examining letter.) It is; yes, sir.

Q. Is that the letter which you sent to Mr. Belin at that time, after you had made an investigation of the Katydid dump?—A. Yes, sir.

Q. I will show you another paper dated February 12, 1909, addressed "Dear Sir" only, and purporting to be signed by you. Is that your signature and your report in this matter?—A. (After examining paper.) Yes, sir.

Q. I show you another paper, without date, which is entitled "Estimate of different sizes of coal and value of same contained in the Katydid culm dump," purporting to have your signature. Is that your signature?—A. (After examining paper.) It is; yes, sir.

Q. Do these several papers contain the result of your investigations into the Katydid dump or only the result of the first investigation and not the second?—A. This last [indicating] has reference to the second examination that I made, and this [indicating] has reference to the first.

Q. That is the letter to Mr. Belin of February 12, 1909, and the paper addressed "Dear Sir" of that date referred to the first investigation?—A. Yes, sir.

Mr. WORTHINGTON. Now, Mr. President, conforming to our understanding of a few moments ago, I first offer in evidence his report after the second examination, as to which we agreed.

Mr. Manager STERLING. That is included in the agreement. We do not object to that.

Mr. WORTHINGTON. Very well. Then I will ask to have that marked and read now, and then we will see whether we can get the rest of it in.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read the paper, marked "U. S. S. Exhibit W," as follows:

[U. S. S. Exhibit W.]

Estimate of the different sizes of coal and value of the same contained in the Katydid culm bank.

Number of gross tons in old bank, being 15 per cent of the total, 13,500.

Composed of—	Tons.
18.7 per cent slate	2,525
17 per cent culm	2,295
7 per cent coal larger than pea	945
.6 per cent pea	81
21.2 per cent buck	2,862
21.5 per cent rice	2,902
14 per cent barley	1,890
100.0	13,500

Number of gross tons in new bank, being 85 per cent of the total, 76,500.

Composed of—	Tons.
15 per cent slate	11,475
28 per cent culm	21,420
2.9 per cent coal larger than pea	2,219
.3 per cent pea	229
8.1 per cent buck	6,196½
23.5 per cent rice	17,977½
22.2 per cent barley	16,983
100.0	76,500

Total number tons of each size in both banks and value of same on the ground.

Slate	14,000 tons.	
Culm	43,715 tons.	
Coal larger than pea	3,164 tons, at \$1.80	\$5,695.20
Pea	310 tons, at \$1.50	465.00
Buck	9,058½ tons, at \$1.10	9,964.35
Rice	20,879½ tons	14,615.65
Barley	18,873 tons	5,661.90
	90,000	36,402.11

H. W. SAUMS.

Q. (By Mr. WORTHINGTON.) Mr. Saums, from your investigation of this dump and your knowledge of the subject, what do you say as to whether or not that dump at the time you made that investigation which resulted in the report just read was one that would pay to put a washery to work?

Mr. Manager STERLING. We object. It is wholly immaterial.

Mr. WORTHINGTON. I suppose the question whether this dump was worth anything would depend, in the first place, upon the material in it and the value of that material, and then what it would cost to get it out.

The PRESIDING OFFICER. Upon that the witness would be justified in testifying as to what he thought was the value of the dump, and he could give as his reason the amount of material to be found there and the cost of extracting it. In other words, the Chair thinks the question of counsel asks him to testify to a conclusion. He ought to state the facts and let the Senate find the conclusion.

Mr. WORTHINGTON. I am asking him what would be the cost of a proper washery to take out that dump and wash the material in it.

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The Chair thinks that that is legitimate.

Q. (By Mr. WORTHINGTON.) Answer my question.—A. Shall I answer that question?

Q. Yes; the President rules that you may answer the question.—A. May I ask whether you refer to the washery alone or the complete plant?

Q. I mean the complete plant.

The PRESIDING OFFICER. The witness will answer the question as asked.

Q. I mean whatever construction would be necessary to get the coal that is merchantable out of the material that was not merchantable, separate it, and have it ready to sell.—A. In the neighborhood of \$35,000.

Q. Have you given any consideration to the question of a scraper line to take that material—you have seen the consolidated washery near the Katydid dump?—A. Yes.

Q. You know all about that situation, do you?—A. I am somewhat familiar with the location there; yes, sir.

Q. Have you made any calculation as to whether or not a scraper line from the Katydid dump could be utilized in connection with that Consolidated washery?—A. Oh, yes; it could be done. What would the cost of a conveyor line be from the Katydid bank to the consolidated breaker?

Q. Yes; that is the first question.—A. About \$4.50 a foot. In other words, between eight and ten thousand dollars.

Q. And that scraper line would be valuable for what when you got through with it?—A. Scrap, generally.

Q. Would you require anything but the mere track itself?—A. Yes. The \$8,000 to \$10,000 would be exclusive of the pump and water pipes.

Q. Well, what would the whole thing cost? I mean, to do whatever was necessary to get the culm from the Katydid dump to the Consolidated washery.—A. Between \$10,000 and \$11,000.

Q. Do you know whether or not when you get the coal there to the Consolidated washery it is equipped to get out the larger sizes of coal above pea?—A. I do not.

Q. You do not know?—A. No.

Q. In the calculation that you have made in the report which is in evidence, "U. S. S. Exhibit W," what size mesh did you have in mind when you put the item "barley" at 18,873 tons?—A. Through three-sixteenths round and over one-sixteenth round.

Q. Is that the customary size of the mesh?—A. It is what we use, sir.

Q. There is another subject I wish to ask you about, Mr. Saums, and that is as to what extent, if at all, you can get out chestnut coal—coal of the chestnut size and above—in a dump like this, or in this particular dump?—A. You can get a certain per cent of chestnut, but not prepared so it will enter into competition with freshly mined chestnut.

Q. Why is that?—A. Owing to its appearance. The larger size—nut coal—for instance, made from the washery is composed largely of different grades of bone with some pure coal, of course, and it carries a much larger per cent of ash than the freshly mined coal. Therefore we have never found it practicable to prepare this coal clean enough to have it compete with freshly mined coal. We sell it for from 75 cents to \$1 a ton less than the circular price for freshly mined coal of that size.

Q. I notice in this report of yours, which is in evidence, you have put this "coal larger than pea, 3,164 tons," at \$1.80. Why do you put it at \$1.80, in view of what you have just said?—A. In making that report for Mr. Belin he gave me to understand that he did not wish to erect a washery there, but he wished to use this fuel for a power plant he proposed to locate back across the hill.

Q. Of the Du Pont Powder Co.?—A. Yes, sir. And he wanted to use this material—coal, slate, and culm all mixed together—and he asked me to put a value on it. Therefore I had to classify it to a certain extent, you see.

Q. In reference to his use?—A. In reference to his use; yes.

Q. If you were computing it with reference to putting it on the market generally.—A. (Interrupting.) I would have computed it as per my first report.

Q. And what would that be?—A. \$2.30, I believe I used for nut coal.

Q. Suppose the scraper line to have been constructed as you have estimated, from the Katydid dump to the consolidated washery, what would be the cost of operation? You have told us now what would be the cost of the construction required to get the coal from the Katydid dump to the consolidated washery. What would be the cost of operation per ton?—A. I think 30 cents would be about right.

Q. According to your estimate that would cost how much—30 cents a ton for how many tons? Let us see what the ultimate result would be.—A. (After calculation.) \$15,685.50.

Q. Does that estimate include the cost of operating the scraper line or the scraper line and the washery, both?—A. That includes all of the operating expense.

Q. Now, in reference to the map to which you referred yesterday, you see in the southwest corner of it, as it hangs on the wall, is a part called the conical dump. Do you see that?—A. Yes.

Q. Did you include that in your estimate?—A. Yes.

Q. As of the same average quality as the rest of it?—A. Yes, sir.

Q. You knew nothing, as a matter of fact, as to what was in the core of that conical dump?—A. No, sir; I did not. I assumed that everything that could be seen was coal.

Mr. WORTHINGTON. That is all.

Cross-examination:

Q. (By Mr. Manager STERLING.) And if your assumption was correct, and according to the testimony in the case, you think that your estimate of the amount of the coal in that conical dump is correct, do you not?—A. According to my test; yes, sir.

Q. You did not test the material that was down in the draw there, did you? The testimony is that they filled up a draw there. There was a fill there under the conical dump. You did not test anything down there?—A. No, sir.

Q. And you did not estimate for it, did you?—A. No, sir; because I knew nothing about it.

Q. You made this investigation for the Du Pont Powder Co.?—A. For Mr. Belin, of the Du Pont Powder Co.; yes, sir.

Q. And at that time the Du Pont Powder Co. was a prospective purchaser?—A. I presumed so.

Q. And you estimated the value of this coal at what you thought it would be worth to them for their use?—A. I estimated what I thought it would be worth on the ground, the cost of picking it up.

Q. I understood you to say that this coal, which you estimated at \$1.80 a ton, would be worth \$2.30 on the market?—A. Yes, sir.

Q. It would be worth 50 cents more a ton, would it, on the market than your estimate here?—A. Allow me to explain, if I may.

Q. Answer my question first and then you may explain. Is that what I am to understand?—A. Not in that size, sir.

Q. The size that you have estimated at \$1.80, I understand you say, would be worth \$2.30 on the market; is that right?—A. That represents sizes from what we call broken—

Q. I am not asking you what sizes. But this coal which in your report you estimated at \$1.80, for the Du Pont Powder Co. purposes, you would consider worth \$2.30 on the market?—A. If it was reduced to nut coal; yes, sir.

Q. Now you may make any explanation you see fit about sizes.—A. Very well, sir. This coal larger than pea is composed of various sizes, from what we call steamer and broken size down to nut size. In washery practice, all these sizes, promiscuously, are run through a set of rolls and reduced down to nut. We do not find it practicable to make any size larger than nut coal from a washery. In this process of grinding a great deal of it, of course, is reduced into small sizes, and some goes off in dirt, in waste. That is why I made that difference of 50 cents—the difference between \$1.80 and \$2.30 a ton.

Q. And you say chestnut coal is not worth so much when you get it from a culm dump as when you get it from the mine?—A. No, sir.

Q. That it is worth 75 cents to \$1 less per ton on account of its appearance. Now, what was chestnut worth at that time in Scranton from the mine?—A. I can not answer that question. The circular price at that time was about \$3 a ton, I think.

Q. About \$3 a ton there?—A. At tide; I am speaking of tide.

Q. Mr. Saums, you have divided the culm dump into two parts. I wish you would add the percentages in both parts, of everything except what you have marked as slate. That is, all the different kinds of coal; add the percentages in both parts. What is the percentage of coal in the old part, that which you have marked the old part of the culm; what is the total of the percentages of coal material in the old part of the dump, according to your report?—A. I do not think I understood you right at first.

Q. Well, I will ask you to add the percentages.—A. The total percentage is 100 per cent.

Q. I said of the coal; I said excepting slate.—A. Oh, I beg your pardon.

Q. Just deduct the slate from 100.—A. All right, sir.

Q. How much is the percentage in the old part?—A. 82.30 per cent.

Q. What is the percentage in the new part?—A. Sixty-seven per cent.

Q. What is the total number of tons of coal in both parts, according to your report; that is, of everything—of all the kinds of coal material in the dump?—A. Exclusive of the—

Q. Exclusive of the slate. That is the only thing you marked there as waste, I think. How many tons of coal are there in the dump, according to your report?—A. In both dumps?

Q. In both of them together?—A. (After calculation.) 52,285 tons.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Does that mean coal or culm?—A. Coal.

Q. Can you tell us what proportion of that would be of a size under pea?—A. Seventy-six and a fraction per cent of that would be under pea size.

Mr. WORTHINGTON. That is all.

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. This witness may be discharged, as far as we are concerned.

The PRESIDING OFFICER. The witness is discharged finally.

Mr. WORTHINGTON. Now, we will call Mr. Jennings.

TESTIMONY OF JOSEPH P. JENNINGS—RECALLED.

Q. (By Mr. WORTHINGTON.) Since you were upon the stand have you obtained the original figures of the engineer who made the estimate upon which you based your figures?—A. Yes, sir; I have.

Q. Have you it with you?—A. I have the notebook.

Q. Whose figures are those; whose book?—A. That book was used by Mr. Merriman.

Q. Where did you get it?—A. I sent to Scranton and got it from the office.

Q. From the Hillside Co.'s office, where you were employed?—A. Yes.

Q. From where he was employed?—A. Yes.

Q. I wish you would go on with the calculation you were making when you were on the stand and was stopped because we did not have the original document here. Have you gone over his figures?—A. I had that map.

Q. That is the map of which a blue-print copy is in evidence.—A. And Mr. Merriman's notes as he made them on the field at the time he made the survey of the dump.

Mr. WORTHINGTON. The map to which the witness refers is the one identified by Capt. May, which was left at the office of the Hillside Coal & Iron Co. when Mr. Merriman died.

Mr. Manager STERLING. We object to this witness testifying from those notes, for the reason that we have Mr. Merriman's report in there, and this is purely secondary evidence. He does not know whether they are correct or not. Inasmuch as Mr. Merriman's report itself is in evidence, I can see no purpose in offering any secondary testimony, even if it was competent.

Mr. WORTHINGTON. If the objection is insisted upon, as I understand, Mr. President, we will have to ask the witness to step down once more and take that blue print, which the witness could not use because it was in the possession of the managers, and have him go over the calculation which he has made, based on the plat from which the blue print was made and the original figures. The question was made in the cross-examination of Capt. May by the manager who has just been speaking for the purpose of leading to the conclusion that the 55,000 tons reported by Mr. Merriman on the blue print, or stated on the blue print, was coal. This witness has gone over the figures which Mr. Merriman put upon his map and which are upon the blue print of the dump, and has gone over the calculations to verify them. He has made the calculation himself, and finds that it means the cubical contents of the pile and not the coal. He has found some slight errors in the calculation, making the total cubic content of it a little more than that figured out by Mr. Merriman himself on the blue print which is in evidence.

Mr. Manager STERLING. That puts counsel in this attitude—

Mr. WORTHINGTON. And, further, that Mr. Jennings has testified already that he went upon the ground himself and examined the dump, so that he is in a position to determine with absolute certainty the question whether 55,000 means coal or means culm.

Mr. Manager STERLING. That is a different question, what he saw personally. The other question puts them in this attitude—of putting in the report of Mr. Merriman, the engineer, and then he being dead they bring some one else on to contradict him; and it being purely secondary evidence, we object to it.

The PRESIDING OFFICER. The Chair thinks the witness could be used to testify to anything on that paper which is in evidence.

Mr. WORTHINGTON. I do not understand the Chair.

The PRESIDING OFFICER. The Chair thinks the witness can be interrogated as to any matter on the paper which is already in evidence.

Mr. WORTHINGTON. Then we will ask him to step aside and give him that paper, and ask him to make his calculation from that paper.

The PRESIDING OFFICER. Of course, so far as his calculations are based on any paper in evidence, he can testify to that. The Chair does not think that loose notes are admissible. There is no evidence that those are the notes on which the cal-

culatation was based. They may or may not be. It would be secondary evidence.

Mr. WORTHINGTON. Without pressing that matter now, and without abandoning our claim that the book might be put in evidence, we will pass the matter until he has an opportunity to look at the blue print in evidence and see whether we can get along with that and without the other.

Mr. Manager STERLING. I will say to the counsel that we shall certainly object to this witness interpreting what is on the blue print. The Chair and the Senate can interpret that as well as the witness. We shall certainly object to that testimony.

Mr. WORTHINGTON. Here is a memorandum at the bottom of the blue print, which says "55,000 tons available"; and the man who made it is not alive, and the managers contend that it means 55,000 tons of coal, Capt. May says that the notation on it means 55,000 tons of culm, and this engineer, having the figures from which the calculation was made, has gone over it and can show it means culm and not coal.

The PRESIDING OFFICER. The figures founded on that report, of course, are subject to examination, but not otherwise, in the opinion of the Chair, and the calculations can be made by counsel and used in the argument as well as if produced by the witness.

Q. (By Mr. WORTHINGTON.) While the witness is here there is another matter about which I wish to examine him. You have examined this dump, Mr. Jennings?—A. Yes, sir.

Q. When did you make an examination of it and in what way?—A. Do you mean an examination as to this map?

Q. No; I mean the dump itself. Did you go on the ground and examine the Katydid dump itself?—A. Yes, sir; I went there over a year ago with Mr. May, and I went there in November of this year.

Mr. Manager WEBB. I think the witness has testified to that already.

Mr. WORTHINGTON. That was my recollection, but my associate thought he had not.

Mr. Manager WEBB. I think he had.

Q. (By Mr. WORTHINGTON.) How long ago was your last visit?—A. Two or three days before Thanksgiving Day.

Q. You had information at that time that there were 55,000 tons of culm in it?

Mr. Manager STERLING. We object.

Mr. WORTHINGTON. I want to ask him if he made a calculation as to the portion of culm, assuming that it was culm.

The PRESIDING OFFICER. What is the question?

Mr. WORTHINGTON. The question is, from the examination this witness made of the pile, assuming that there were 55,000 tons of culm in it, what proportion of it was coal of different sizes and what proportion was culm. It is in evidence that there were 55,000 tons of something there, according to the report of a man who is dead, and it is a question for the Senate to pass upon, probably, whether that means 55,000 tons of culm, as Capt. May says he understood it, or 55,000 tons of available coal, as the managers seem to contend. We have a right, and I am only asking this witness—

The PRESIDING OFFICER. The witness may testify as to anything within his own knowledge.

Mr. WORTHINGTON. We are asking him upon an examination made of the dump to testify as to the proportions of the different kinds of coal in it. That is all.

The PRESIDING OFFICER. Of his own knowledge?

Mr. WORTHINGTON. Yes.

Mr. Manager STERLING. The question involves this: The counsel asked the witness to assume that there were 55,000 tons of gross material, and for him to make an estimate on that assumption is simply for the witness to interpret the meaning of the report made by Mr. Merriman, in which he undertakes to assume that that was gross material, when, as we insist, the report plainly shows it was available coal. For him to make an estimate of the coal on the assumption that that report means that there were 55,000 tons of gross material would simply be interpreting that for the Senate which we say the Senate themselves must interpret.

The PRESIDING OFFICER. The Chair thinks the witness ought to limit his testimony to what he knows from his own knowledge of the case.

Q. (By Mr. WORTHINGTON.) Perhaps we can work this out. [To the witness:] Did you have this paper with you when you went on the dump?—A. I did.

Q. Did you find stakes there?—A. I did.

Q. Agreeing with those indicated on the map?—A. I did. I found nearly all of them. There are one or two I could not find, but I found nearly all of them.

Q. So you are able to say that the map is substantially correct?—A. Yes, sir.

Mr. WORTHINGTON. I offer that map in evidence.

Mr. Manager STERLING. It is offered in evidence?

Mr. WORTHINGTON. Yes. The witness says he took it to the dump and saw the stakes there and compared them with those on the map, and he told us of his own knowledge that the map is substantially correct. I offer it in evidence.

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. What is the ground of the objection?

Mr. Manager STERLING. For the reason that this witness testified he has no knowledge. He only found that in the office of the engineer. We think that because a man found certain stakes on this culm dump, and the stakes are correct as indicated on the map, does not indicate anything about whether the map is correct otherwise or not. It is purely secondary evidence. You are proving a map by some one who knows nothing about it.

The PRESIDING OFFICER. The Chair thinks the witness must prove the correctness of the map, as to the measurements and everything else, if the map is to be introduced in evidence.

Q. (By Mr. WORTHINGTON.) To what extent, Mr. Jennings, can you state whether that map is or is not a correct representation of the dump?—A. I took these notes and worked it up.

Mr. Manager WEBB. The notes are not in evidence and have been excluded.

The PRESIDING OFFICER. The witness may testify as to whether or not he has verified all the details of the map, and if he has done so it is admissible in evidence.

Q. (By Mr. WORTHINGTON.) What do you say to that, Mr. Jennings?—A. I have not verified every detail of this map. I could not go and measure all those distances.

The PRESIDING OFFICER. Unless he has done so, the map is not admissible in evidence. If he has, it is.

Mr. WORTHINGTON. Let us see the memorandum book. [To the witness, handing book:] Do you know whether or not that is in the handwriting of Mr. Merriman and that is the book he kept while in the performance of his duties?—A. (Examining.) Yes, sir; that is the book.

Q. It was his custom to make those entries at that time?—A. Yes, sir.

Q. In the course of his business, at the time he made the investigations?—A. Yes, sir; that is the book. He itemized it.

Mr. WORTHINGTON. I think, under all the rules of evidence, that book, being a record made in the course of the performance of the duties of Mr. Merriman while making this investigation, and which were among his papers found in the office of the Hillside Coal & Iron Co. after his death, is competent evidence of the facts stated in it just as much as the book entries of a bookkeeper or a record of marriages made by one whose business it was to keep an account of marriages or the performance of any other thousand and one things for which books are put in evidence to prove the truth of the facts stated in them.

The PRESIDING OFFICER. The Chair thinks that it is perfectly competent for parties who desire to prove the correctness of that map to have those measurements verified by a living witness, and unless that is done, in the opinion of the Chair, the map is not admissible in evidence.

Mr. WORTHINGTON. Very well. That is all, Mr. President.

The PRESIDING OFFICER. It is not a case of proof as to a matter which rested within the knowledge of somebody now dead and where the proof could not be made by others. It is perfectly competent to have the measurement now made to verify that map.

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. That is all, Mr. Jennings. I should like to have it understood that this witness is not discharged.

The PRESIDING OFFICER. He will be so notified.

TESTIMONY OF V. L. PETERSEN.

V. L. Petersen appeared and, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Petersen, your full name, please.—A. V. L. Petersen.

Q. Where do you live?—A. Scranton, Pa.

Q. What is your business?—A. Mining and real estate.

Q. Mining what?—A. Coal.

Q. In what department of mining have you been engaged?—A. All departments.

Q. Including washeries?—A. Yes, sir.

Q. Have you any personal knowledge of the Consolidated washery, which is situated in the neighborhood of the Katydid culm dump?—A. That was built after I left the Hillside Coal & Iron Co.

Q. When were you connected with the Consolidated, or with the Hillside, so that you knew about the operations of the Consolidated?—A. Up until 1909—June, 1909.

Q. How many years had you been there prior to June, 1909?—A. I had been in the employ of the Hillside Iron Co. for something better than 25 years.

Q. Did you have charge of that particular plant, the Consolidated?—A. It is one of the plants I had charge of.

Q. Were you engaged there at the time Mr. Robertson was working or washing the Katydid dump?—A. I was.

Q. What can you tell us, of your own knowledge, as to whether or not in that operation he did not win chestnut coal from that dump?—A. When they first started to work the Katydid dump they tried to win chestnut and other sizes, but found that that was not commercially practicable.

Q. Why?—A. Because they could not make it pay.

Q. Why could they not make it pay?—A. Because there was so much impurity and waste to be handled in proportion to the small amount of coal that could be won, that it was not commercially feasible.

Q. What sizes then could be commercially produced from that dump?—A. From No. 1 buckwheat down.

Q. Now, can you tell us from your observation there whether he was working an average part of the dump or the better part of it, or the worst part of it?—A. He was working the better part of the dump.

Q. What would you say as to the part of the dump which remained there, as to whether it is possible to win chestnut coal from it to any extent or of any value?—A. Not commercially.

Q. What do you mean by "not commercially"?—A. That you can not make it pay.

Q. Did you have any connection with the negotiations for the purchase of the dump known here as Packer No. 3, near the Oxford washery?—A. Not the negotiations; no.

Q. Did you have anything to do with that business in connection with Judge Archbald?—A. I went down twice to examine the dumps.

Q. The Packer No. 3?—A. Packer Nos. 3 and 4.

Q. Well, go on and tell just what you had to do with that, Mr. Petersen, as your name figures here in the matter?—A. A friend of mine, Mr. J. F. Bell, an attorney in Scranton, I think, was the first one who spoke to me about this dump or these dumps, and asked me if I would go down and look them over, which I did in company with Mr. Jones.

Q. Which Jones?—A. His first name is Thomas, Thomas Jones.

Q. Thomas H. Jones?—A. I think that is it.

Q. Very well.—A. I made an examination, a cursory examination, not a thorough one, and came back and reported to Mr. Bell on the contents of the dump as I found them and the estimated amount of coal.

Q. Do you remember what your estimate was?—A. I took some notes, but I have not been able to lay my hands on them.

Q. You do not recollect, do you, right now, what conclusion you reached?—A. Not definitely, I think.

Q. Very well; I will not ask you to guess it. Go on, then, and tell what followed. We want to know what your connection was with this proposed purchase of Packer No. 3 from the beginning to the end.—A. I told Mr. Bell I would like to go down again, before the matter was finally determined, to look over the dump again, which I did. After I came back I was asked by Mr. Bell or Mr. Jones, I do not know who, to meet Judge Archbald in his office in Scranton, in the Federal building. The three of us met Judge Archbald there one forenoon.

Q. The three of you were whom?—A. Mr. Bell, Mr. Jones, and myself.

Q. All right. Proceed.—A. While there we spoke about the dump and about the proposed organization of a company to wash it out, and I was asked whether I would take charge of the operation if a lease were consummated for the dump. I said I would, provided the salary, and so forth, was satisfactory. That was all until some time later another meeting was held in Judge Archbald's office, where Mr. Bell, Mr. Jones, and two gentlemen from New York, Judge Archbald, and myself were present.

Q. Do you remember the names of the gentleman from New York? Was Mr. Farrell one?—A. Mr. Farrell was one—the coal dealer. I do not remember the name of the other gentleman.

Q. Very well.—A. We spoke about the selling of coal and about the financing of the undertaking. Mr. Farrell said that he would finance it with the understanding that I was to handle it on the ground. That is all that I know about it.

Q. Do you remember signing an application to Judge Archbald and Mr. Jones and Mr. Bell?—A. Yes, sir.

Q. For that lease?—A. Yes, sir.

Q. I should like to ask you if anything was said about that time about keeping quiet or concealing Judge Archbald's connection with that proposed purchase?—A. Not at all.

Q. Did you ever hear from any source any suggestion or intimation of that kind?—A. No, sir.

Q. Have you any personal knowledge as to whether this was an unusual or a usual transaction, having one man put up all the money?—

Mr. Manager WEBB. We object to that, Mr. President.

Mr. WORTHINGTON. Will you not allow me to ask the question?

Mr. Manager WEBB. You have asked it. It is for the Senate to say whether it is unusual.

The PRESIDING OFFICER. The counsel will complete the question.

Mr. WORTHINGTON. On that question, Mr. President, when Mr. Farrell was on the stand he was asked precisely the same question and gave testimony. I do not remember whether we had any contention then about it or not.

Mr. Manager WEBB. We did.

Mr. WORTHINGTON. Mr. Manager WEBB says we did. The question was answered and Mr. Farrell told what he knew about it.

Mr. Manager WEBB. No; Mr. Farrell finally said he had but two transactions of the same kind, and that is all he said. The counsel for the respondent asked him what the general custom or habit was, and the reply was that he had had only two transactions like it. He never did answer the counsel's question.

The PRESIDING OFFICER. What is the question put by counsel?

Mr. WORTHINGTON. The question is if he knows whether it is a usual or an unusual thing in that anthracite country, of which Scranton is the center, for one person to put up all the money for exploiting a coal operation and others who produce the property and find it to share with him in the benefits of it? I understand the suggestion to be made here that Judge Archbald has done something that he ought not to have done, something criminal, because he did not put any money into this business.

The PRESIDING OFFICER. The Chair thinks the counsel can lay the foundation for that question by asking to what extent the witness has knowledge of other transactions or how general his knowledge might be.

Mr. WORTHINGTON. That is what I am asking him. I may call attention here to the previous ruling upon this question. Mr. Farrell was on the stand. It is at the top of page 805:

The Chair thinks, under the circumstances, that counsel is justified in bringing out the fact that there are such other transactions, but the Chair would hardly consider it proper to go into details.

The PRESIDING OFFICER. The Chair thinks the question ought to be as to how many transactions of this kind he has known or as to which he has knowledge.

Q. (By Mr. WORTHINGTON.) How many other similar transactions have you known about, Mr. Petersen; that is, similar in the respect that one man puts up the money and others share the benefits?—A. I know of two quite recently.

Q. And have you known of others?—A. Yes; but I do not know that I could recall them.

Q. You have known of others, but you can not recall now who they were?—A. Not just who they were.

Q. Can you give us any idea?

The PRESIDING OFFICER. The Chair thinks that it would be better to ask the witness how many he has known of that kind.

Q. (By Mr. WORTHINGTON.) How many altogether would you say you have known of?

Mr. Manager WEBB. He has said two.

Mr. WORTHINGTON. He says two recently, and others the details of which he could not remember. [To the witness.] About how many would you say you have known of altogether, Mr. Petersen?

The WITNESS. Why, I should think possibly a half dozen at least.

Mr. WORTHINGTON. That is all, Mr. President.

Cross-examination:

Q. (By Mr. Manager WEBB.) You say you remember two recently? When were the other four?—A. Some time in the past.

Q. What were they?—A. What were they?

Q. Yes; the other four.—A. Money put up for the purpose of developing coal lands.

Q. What was the name of the company, corporation, or joint-stock company of each of the four?—A. Pardon me, I told the counsel that I could not recollect.

Q. Then you only recollect two; that is the fact, is it not?—A. I could not recollect the names of them.

Q. Well, can you recollect the amounts of the other four?—A. I may not have known the amounts.

Q. Can you recollect the men who were in them?—A. Yes; I recollect, for instance, one.

Q. Well, now, one; who was that?—A. That is a coal company up at Peckville.

Q. Were you in that company?—A. No; I have been employed by them.

Q. That is one. Now, do you remember any other?—A. I do not know that I can give it offhand.

Q. Are you a partner or a stockholder in the two recent ones?—A. I am not.

Q. Were you interested in the formation of the recent ones?—A. Not in their formation.

Q. So all you can remember now are three companies where some other man has put up the money—that is, three definite ones?—A. Yes, sir.

Q. You have been in the coal business 25 or 30 years?—A. Yes, sir.

Q. Now, getting to the Katydid dump, Mr. Petersen—you do not think the Katydid dump is worth anything, do you?—A. Oh, yes; it is worth something.

Q. You think it is worth something?—A. Yes, sir.

Q. What do you think it is worth?—A. Offhand, not having measured it or tested it, I would not pay \$10,000 for it.

Q. You would not pay \$10,000. Would you pay \$5,000?—A. Yes; I would pay \$5,000.

Q. Would you pay \$6,000?—A. Yes, sir.

Q. How much do you think it is worth?—A. Well, I think five or six thousand dollars is all it is worth.

Q. That is all it is worth?—A. Yes, sir.

Q. You have never measured it; you have never examined it; you have never had an engineer to survey it?—A. No; but I know it quite well.

Q. Now, coming to Packer No. 3, when was the first time you saw Judge Archbald with reference to the corporation that was to be known as the Jones Coal Co.—or did you know that it was to be called that?—A. Yes, sir; I heard that.

Q. You heard it?—A. Yes, sir.

Q. Did you not know it when you signed your application to the Girard estate?—A. Possibly; I do not know whether that was mentioned in there or not.

Q. When was the first time you talked to Judge Archbald about it?—A. Some time in the late spring or early summer of 1911.

Q. In the spring or summer of 1911?—A. Yes, sir.

Q. When was it you made your application finally to the Girard estate?—A. All I know about that application is that letter that I signed there.

Q. That is, the application of December 19, 1911. Then, if your application was signed December 19, 1911, Judge Archbald and you had been negotiating or had been discussing the formation of a coal company to take over Packers Nos. 3 and 4 from the spring of 1911 until December, 1911; is that right?—A. Possibly you are right. It might have been later than that. I thought it was early in the summer; but it might have been later than that. I am not positive about that.

Q. When you and Mr. Farrell and Mr. Thomas Howell Jones met in Judge Archbald's office one night in Scranton about this matter, it was agreed that you should supervise the work of the corporation?—A. Yes, sir.

Q. It was agreed that Farrell should put up the money?—A. Yes, sir.

Q. It was agreed that James E. Bell should be the attorney to look after the legal business?—A. I am not positive as to that.

Q. That is the only reason you know of why he would have been in it, is it not—he is an attorney at law?—A. It is possible that was spoken of there; I do not know.

Q. And that Judge Archbald should secure the consent of the Lehigh Valley Railroad Co. to sublease it? Is not that what he was to do?—A. No; he was to get the lease, if possible, from the Girard estate.

Q. They had already gotten it from Mr. Warriner, acting for the Lehigh Valley people?—A. That I do not know.

Q. Who was to get it from the Lehigh Valley people, Mr. Petersen?—A. I do not know that.

Q. Was Farrell to get it?—A. I can not tell you.

Q. You knew he was not, but that he was to put up the money?

Mr. WORTHINGTON. I submit, Mr. President, that the witness should do the testifying and not the manager.

Mr. Manager WEBB. I am asking the question on cross-examination.

Mr. WORTHINGTON. The manager said "You knew he was not."

Mr. Manager WEBB. I raised my voice, Mr. President, indicating it was a question. [To the witness:] I say you knew that Mr. Farrell was to put up the money and that that was the end of his connection with the business, because he was not one of the incorporators?—A. No; I did not know that that was to end it.

Q. Do you know what Farrell was to do?—A. I know that he was to put up the money, but I do not know anything else.

Q. Do you know what Judge Archbald was to do then?—A. Only that he was to try to get the lease from the Girard estate.

Q. Did you know at that time that it was necessary to get the consent of the Lehigh Valley Coal Co. from Mr. Warriner before you could get it from the Girard estate, or vice versa?—A. No; I understood that the Lehigh Valley were quite willing to consent to the re-leasing of the dump, not only to the proposed Jones Coal Co., but to all others, provided the coal was shipped over their road.

Q. You need not go outside of that to make a defense. Who told you that? Did Judge Archbald tell you that he had gotten the consent of the Lehigh Valley Coal Co. to sublease it in case the Girard estate agreed to it?—A. No; I do not recollect that he did.

Q. Then did you not know when you signed that application that Mr. Warriner or the Lehigh Valley Coal Co. had already agreed to sublease it if the Girard estate were willing?—A. I did not; no, sir.

Mr. Manager WEBB. I will ask the Secretary to give me the number of the exhibit showing the application.

The SECRETARY. It is Exhibit No. 27.

Q. (By Mr. Manager WEBB.) I believe you said that you did not know at the time you signed this application to the Girard estate that the Lehigh Valley Coal Co. had agreed to sublease to you?—A. I do not remember that I did; no.

Q. I will ask you if you did not sign this statement, which is directed to the Girard estate:

But we have the assurance of that company—

Referring to the Lehigh Valley Coal Co.—

But we have the assurance of that company that on certain terms and conditions, which have practically been agreed upon between us, it will be satisfactory to them to have us lease from you to the extent suggested.

R. W. ARCHBALD.
JAMES F. BELL.
V. L. PETERSEN.
T. H. JONES.

Q. Did you not sign that?—A. I have no doubt I did, if my signature is there; but I do not remember what was in that paper.

Q. Do you mean to say you signed an important application for a culm bank containing about 500,000 tons of coal without knowing what you were stating to the Girard estate?—A. As to that part of it, yes.

Q. Run over the application, Mr. Petersen, and see if that is what you signed. [Handing paper to witness.]—A. (After examining paper.) Yes, sir.

Q. Now, do you tell us that you do not remember that the expression that you had the assurance of the Lehigh Valley Coal Co. that their consent could be gotten was not in this application when you signed it?—A. I say that I do not remember it.

Q. You do not remember?—A. Of course, it was there; certainly.

Q. Now, perhaps, you can refresh your recollection after you have read that. Do you not remember that Judge Archbald told you that he had already secured the consent of the Lehigh Valley Coal Co., and that the next step was to get the consent of the Girard estate, and that is why you signed this application in this form and made that statement in it?—A. He may have said that.

Q. Did he not say it?—A. I would not be positive that he did.

Q. Was anything like that said?—A. Possibly, but I am not sure.

Q. You are an old coal miner there and know that the railroads or coal companies own these banks, and do you mean to say that you would have applied to the Girard estate without first knowing that you had assurances from the coal company that you could get the sublease?—A. I think that ought to have been the first step taken.

Q. The first step that was taken?—A. No; the first step that ought to have been taken—to apply to the Girard estate.

Q. Precisely, but it was not. Evidently somebody had gotten the consent of the coal company for their lease before you applied. Now, who was it that got that consent?—A. I do not know; I did not.

Q. You do not know?—A. No, sir.

Q. Then, you do not know why you signed such a statement as that to the Girard estate, telling them that you had already received assurances from the Lehigh Valley Coal Co.?—A. I was asked to sign that paper there, and that is all that I know about it.

Q. Did you read it over at all?—A. I think I did.

Q. But you do not remember that statement?—A. No; I have no recollection of it.

Q. Is it not a fact, Mr. Petersen, that you do remember that statement very well and remember the fact that Judge Archbald's part in this transaction was, first, that he had received the consent of the Lehigh Valley Coal Co. to sublease it, and the next step was to apply to his nephew, Col. James Archbald, to receive the consent of the Girard estate, and then the matter would be complete, and you would go to work?—A. I believe there was some such understanding as that, but I am not positive about it.

Mr. Manager WEBB. I think you can stand aside, Mr. Petersen.

Redirect examination:

Q. (By Mr. WORTHINGTON.) One moment. Have you any recollection at all as to what was said about Mr. Bell's consideration for his interest in the proposed company? You said it might have been stated that he was to act as attorney; that that is what he was to do. Do you recollect that anything was said on the subject?—A. No; I am not sure about that.

Mr. WORTHINGTON. That is all.

Recross-examination:

Q. (By Mr. Manager WEBB.) Did you state that you had been in the employ of the Hillside Coal & Iron Co. for 25 years?—A. Yes, sir.

Q. That is the company that is owned by the Erie Railroad?—A. It is a subsidiary company of the Erie Railroad; yes, sir.

Q. Have you been employed by any other railroad or coal company during that time?—A. I was superintendent of the New York, Susquehanna & Western Coal Co., which was also a subsidiary.

Q. All of the companies you have been employed by belong to the Erie Railroad Co.?—A. Yes, sir.

Mr. Manager WEBB. That is all.

Mr. WORTHINGTON (to the witness). How are you employed now?

The WITNESS. I am in business for myself.

Mr. WORTHINGTON. That is all.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF HENRY E. MEEKER.

Henry E. Meeker, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Meeker, will you give us your full name?—A. Henry Eugene Meeker.

Q. Where do you live?—A. New York.

Q. And your business?—A. Coal merchant.

Q. How long have you been a coal merchant?—A. For 22 years.

Q. In that business have you had dealings with people who furnish coal in the anthracite region around Scranton?—A. Yes.

Q. What can you tell us, if anything, as to transactions in which persons in New York put up all the money to operate some coal plant, and other persons who find the plant share with the persons who put up the money in the profits of the operation?

Mr. Manager WEBB. We object to that on the ground that counsel has not asked the question based upon a similar transaction to this. We do not deny that independent coal companies may be formed when coal land is bought, but counsel certainly can not ask a question on all fours, as we would say, with this proposition, where it has been shown in evidence that it required some effort or influence to secure from a coal-owning railroad their consent to sublease their coal land. We do not think the case can possibly be parallel and therefore in point.

The PRESIDING OFFICER. The witness can testify generally; and then it will be competent for counsel to show in what respect this particular case is to be differentiated from the general rule. The Chair thinks it is better, however, for counsel to ask the witness as to his particular knowledge of such cases, instead of as to his general knowledge.

Q. (By Mr. WORTHINGTON.) Well, Mr. Meeker, do you know of your own knowledge of cases in which that has been done?—A. I do.

Q. How many?—A. Well, I know of three of my own knowledge; that I have done myself. I know of several outside of that from hearsay.

Q. Are any of those cases in which the coal property was owned or controlled by a railroad company?—A. In one case part of the property was controlled by a coal company which was owned by a railroad company.

Q. What coal company was that?—A. The Pennsylvania Coal Co.

Q. That is the one of which Capt. May is the vice president, is it not?—A. I think so; I do not know.

Q. Owned by the Erie Railroad Co.?—A. Yes.

Q. How long ago was that transaction?—A. That was about 18 months ago.

Q. How large an operation was it?—A. Well, I think we have about 200,000 tons of coal there.

Q. Now, tell us the others of which you have personal knowledge.—A. The other two were 15 years ago. They were down near Plymouth. One was a mining proposition and the other was a washery proposition.

Mr. WORTHINGTON. That is all, Mr. President. I do not care to go into the details of any of these transactions. The managers can ask for them if they so desire.

Cross-examination:

Q. (By Mr. Manager WEBB.) Mr. Meeker, what did the company you formed 18 months ago propose to work—a culm bank or coal property?—A. They proposed to work what is called a fill, which was composed of coal that was dumped by the Pennsylvania Coal Co. many years ago to make the gravity road.

Q. And abandoned when the old gravity railroad was taken up?—A. Yes.

Q. And, therefore, the Pennsylvania Coal Co. did not own an interest in it, because it had abandoned it 25 or 30 or 40 years ago. Is not that true?—A. One bank, as I understand, was leased by the Pennsylvania Co. to an individual, and the people who came to me had bought from that individual their lease.

Q. Who was that individual—V. L. Petersen?—A. I could not say off hand; I think it was, but I am not sure.

Q. He was the man who was on the stand awhile ago and employed—A. I would not want to say that. I have the papers, and I can find out for you. My recollection is that there is a Petersen fill there, or what is known as "Petersen's fill," but whether Petersen was the individual who had the lease that was sold to a man named Mumford I do not know.

Q. You know, as a matter of fact, do you not, that the old fills along the gravity railroad were abandoned by the Pennsylvania Coal Co. many years ago?—A. I do.

Q. And that when they abandoned the fills they lost possession of them?—A. I do not know that as a matter of fact.

Q. Well, did anybody else claim this fill, or did you get a lease from anybody else, besides the Pennsylvania Coal Co.?—A. I did not get any lease. Mr. Mumford and others had a lease.

Q. Did you see the lease?—A. I saw the lease, or my attorney saw the lease.

Q. Whom was it from—who made the lease?—A. The Pennsylvania Coal Co. made the lease.

Q. To whom?—A. You say it was to Mr. Petersen. I can not give you the name now.

Q. I ask you if it was not Petersen, and Petersen leased or decided it to some trustees, did he?—A. No; he leased—no; Mr. Petersen did not lease to anybody. To be perfectly frank with you, I have forgotten entirely. I have the papers; if you would like me to give those names, I could give that to you from the papers.

Q. Have you them here?—A. Upstairs; yes, sir.

Q. I will be glad to see them after you stand aside to-night. Do you know anything about the title to the old gravity fill?—A. I do not.

Q. You do not know what interest the Pennsylvania Coal Co. had in it after it was abandoned, but you do know it was abandoned by them years ago?—A. I do know that from general knowledge.

Redirect examination:

Q. (By Mr. WORTHINGTON.) You do know that this lease under which this operation was to be carried on was a lease from the Pennsylvania Coal Co. on the—A. Part of the lease; yes.

Q. Is it not a fact that the dump was called not the Petersen dump but the Patterson dump; was not that the dump?—A. No; the Patterson fill is the name; I know that.

Q. What kind of material was the fill?—A. It was all culm.

Q. It was culm?—A. Yes. But I do not believe the lease was in Mr. Petersen's name, as I recollect it.

Recross-examination:

Q. (By Mr. Manager WEBB.) How far is this fill from the railroad?—A. About 2 miles.

Q. What railroad?—A. From the Erie road.

Q. (By Mr. WORTHINGTON.) Was the coal that was made from the fill shipped by the Erie?—A. Yes. The washery is on the Erie. The culm is moved to the washery.

Q. (By Mr. Manager WEBB.) I will ask you if you do not know that it is a universal policy of the coal-owning roads in Pennsylvania not to sell or lease their properties?

Mr. WORTHINGTON. I object to that as not being cross-examination. I did not ask him anything about that. I ask that the cross-examination be confined to the subject to which the direct examination was addressed.

The PRESIDING OFFICER. The point is well taken.

Mr. Manager WEBB. That is all we care to ask him.

Q. (By Mr. WORTHINGTON.) I will ask you one other question. Are you the Mr. Meeker of the Meeker case that we have heard something before the Interstate Commerce Commission?—A. Yes, sir.

Mr. WORTHINGTON. That is all.

The WITNESS. May I be excused?

Mr. WORTHINGTON. Yes; so far as we are concerned.

The PRESIDING OFFICER. Is it desired that this witness should be retained for any purpose?

Mr. Manager WEBB. Yes, sir; it is, Mr. President.

The PRESIDING OFFICER. The witness will be temporarily excused but not finally discharged.

Mr. WORTHINGTON. If after reading the papers the managers do not want him, he may be discharged so far as we are concerned. He need not wait on our account.

Mr. Manager WEBB. Very well, then; the arrangement is satisfactory.

TESTIMONY OF MORITZ RICHARD HELLBUT.

Moritz Richard Hellbut, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Please give us your full name.—A. Moritz Richard Hellbut.

Q. Where do you live?—A. Red Bank, N. J.

Q. What is your business?—A. Coal business.

Q. What branch of the coal business?—A. Selling coal.

Q. How long have you been engaged in that business?—A. Nearly all my life—for 25 years.

Q. Did you have any connection with the proposed purchase, in the year 1911, of what is known as Packer No. 3 dump?—A. I did.

Q. Near the Oxford washery?—A. I did.

Q. Tell us about that, please.—A. I was trying to get a dump for Robertson, Haydon & Co., the firm in which I was interested, and I tried to find a good dump. I was told about this dump through a man named T. H. Jones.

Q. T. H. Jones?—A. T. H. Jones. He wrote me a letter about it, and I told him that if the dump was as he represented it I could find him some money to get this dump. He asked me, then, on the 20th of December last year to come to Scranton with my party and see Judge Archbald about it, who was partly interested in this dump. We got to Scranton and saw the judge at his office in Scranton that evening. We spoke over the proposition, talked it all over, and decided to go the next day up to Shenandoah, where the dump is, and inspect it. After we inspected it we considered—

Q. Who inspected it with you?—A. Mr. Farrell was with me, and Mr. Jones and Mr. Farrell's son, and we measured the dump and found, I think, it was about 700 square feet. We considered that it was a safe proposition to put in the amount of money that was to be required to build the washery.

Q. You say, "We considered it a safe proposition." Whom do you mean by "we"?—A. Mr. Farrell asked my advice on it. That is the reason I say "we."

Q. And you did agree then to put in the money?—A. Yes.

Q. What were you to get for your money?—A. Mr. Farrell put in also some money and he was to get 20 per cent of the profits of the company and 6 per cent on his money.

Q. And the rest was to go to whom?—A. The rest was to go to the stockholders. Mr. Jones proposed to give him a share of the stock, but he said he would not take it. He said he did not want any stock, only wanted a profit in the company.

Q. He did not want to become a stockholder?—A. He did not want to become a stockholder.

Q. Do you know of other transactions of that kind—I mean where one person or a set of persons find a coal property and other persons put up all the money necessary to operate it?—A. I am interested in another one now where exactly the same thing happened.

Q. Where is that?—A. At Hawley, Pa.

Q. In a general way, what is the extent of that operation; is that a large or small operation?—A. Quite a large one, considerably more than \$30,000.

Q. And from what company or concern does that property come?—A. In some part directly from the Pennsylvania Coal Co., and in some part from sublessees of the Pennsylvania Coal Co.

Q. Is that the operation in which Mr. Farrell is interested with you, too?—A. Yes.

Q. And as to which he has testified?—A. Yes; I guess he has.

Q. Do you know through what party or parties that interest comes from the Pennsylvania Coal Co.?—A. I think through Mr. Petersen.

Q. You think through Petersen?—A. I think so, but—

Q. You know Mr. Petersen has been on the stand?—A. Yes.

Q. Is that the man?—A. Yes; that is the man.

Q. Do you know of any other cases of this kind, where one person or party finds the property and gets somebody else to put up the money?—A. I know of Mr. Meeker—

Q. Do you know of any others?—A. I only have heard about other cases. I could not say positively.

Q. Do you know of a case in which a man named Hildebrand was concerned?—A. His case is a little different from that. We had a case—

Mr. Manager WEBB. Never mind about that, unless the counsel wants it.

Mr. WORTHINGTON. No; I do not care about troubling you about that, Mr. Hellbut.

Q. (By Mr. WORTHINGTON.) I want to know if anything was said at the meeting where you met Judge Archbald or at any other time, for that matter, by anybody about keeping quiet the fact that Judge Archbald was an interested party in this transaction?—A. Not at all.

Mr. WORTHINGTON. That is all, Mr. Manager.

Cross-examination:

Q. (By Mr. Manager WEBB.) The reason why you put your money in it was because Judge Archbald was one of the incorporators?—A. I did not put my money in. You mean Mr. Farrell?

Q. You found the man who put his money in?—A. Yes.

Q. That is the reason why he put his money into the proposition?—A. Oh, no.

Q. Because Judge Archbald was interested in it?—A. No, sir; he did not put his money in for that reason. He put it in because he thought the proposition was a good one.

Q. But he had to have somebody back of the proposition before he would get his money out of it?—A. He had full security. We had to hold the stock in escrow until all his money was paid back. The whole stock was in escrow until his money was paid back at 20 cents a ton, with interest.

Q. I understood that Mr. Jones found you and you found Mr. Farrell and Mr. Farrell furnished the money. Is that right?—A. That is right.

Q. You spoke about a fill containing something like 200,000 tons. Is that one of the old gravity railroad fills?—A. Yes; one of the old gravity railroad fills.

Q. One of the old fills that the Pennsylvania Coal Co. abandoned?—A. It is 12, 13, and 14, and, I think, 15, too.

Q. An abandoned gravity fill?—A. Yes; an abandoned gravity fill; one of the best coals in the market.

Q. Abandoned 35 or 40 years ago?—A. Abandoned, I think, 30 years ago—about.

Q. Do you not know that the Pennsylvania Coal Co. does not own the land or the coal that you are working now?

Mr. WORTHINGTON. I submit this witness can hardly be expected to know.

Mr. WEBB. I ask him if he does, and he can answer that.

The PRESIDING OFFICER. It is put interrogatively.

The WITNESS. May I have that question asked again?

Q. (By Mr. Manager WEBB.) Do you not know that the Pennsylvania Coal Co. does not now own either the land on which this fill is or the culm in it?—A. No; I do not.

Q. You do not know whether it owns it or not?—A. I am told—and I have leased of the Pennsylvania Coal Co.—I have seen a lease of the Pennsylvania Coal Co. where they claimed to own it.

Q. They claimed to own it?—A. Yes.

Q. And the lease you have is through this man Petersen, who has been employed by them for 25 years?—A. I have not the lease from Petersen; I have the lease from the Pennsylvania Coal Co. Mr. Beyea signed the lease as land agent.

Q. How does Mr. Petersen figure in it?—A. There was some part of the fills which was sublet locally, and he got them all together so as to make a tonnage which would justify building a washery to take care of any amount of coal.

Q. Have you a lease from Petersen?—A. We have no lease from Petersen.

Q. What has he to do with, or did he have to do with, the forming of the company?—A. The forming of the company he had nothing to do with.

Q. How did he figure in the transaction, then? You spoke of him a while ago.—A. Mr. Petersen figured in the transaction in this way: He has gotten together from four or five people there the leases which they owned.

Q. Four or five people, you say?—A. Yes; four or five different people—the leases which they owned.

Q. And Petersen leases to you?—A. No. He had the people turn the leases over to us direct. Mr. Petersen is not in it at all.

Q. He turns these leases over to you directly?—A. Yes.

Q. And if the Pennsylvania Coal Co. had any interest, they have leased that to you, too?—A. They approve the leases, and they were turned over to us.

Q. Do you not know that those individuals that leased to Petersen owned the land, and because the Pennsylvania Coal Co. abandoned it 35 or 40 years ago they also abandoned their right to the culm, and those individuals own both the culm and the land?—A. That is new to me.

Q. Do you know what proportion the Pennsylvania Coal Co. claims in the bank—what interest they claim?—A. What interest, you mean, they own in the land?

Q. I want to know if you know what interest the Pennsylvania Coal Co. claims in this old gravity fill that you are working?—A. That they own it all.

Q. What interest do the individuals have who give you the lease?—A. They did not claim to own anything. The Pennsylvania Coal Co. has the right of way, as I understand, on each side for 25 feet. They own the actual land, I am told.

Q. What did the individual own?—A. The individual had a lease from the Pennsylvania Coal Co.

Q. When were these leases made?—A. Ten years ago, I think, some; eight years ago. They screened it locally, with hand screens, for local consumption, and left everything below pea and even pea in that screening.

Q. Then if individuals were leased this fill by the Pennsylvania Coal Co. and you owned the individuals' leases, why did the Pennsylvania Coal Co. make you a lease direct?—A. On part of it the Pennsylvania Coal Co. did not have any leases given out.

Q. What part? That is what I asked you awhile ago.—A. I think it was the twelfth level. I will have to look that up. And the thirteenth and fourteenth plane.

Q. What proportion in decimal figures would that be of the dump, if you know?—A. I never have figured it all together. I did not figure it especially, you know.

Q. All you know is, then, that the Pennsylvania Coal Co. claimed an interest in the fill; you do not know what it is?—A. I know we have the fill from the Pennsylvania Coal Co. direct and the re-lease from others, with the consent of the Pennsylvania Coal Co., which is required.

Mr. Manager WEBB. All right, sir; stand aside.

Q. (By Mr. WORTHINGTON.) Who do you say signed the lease for the Pennsylvania Coal Co.?—A. Mr. Beyea, the land agent.

Q. (By Mr. Manager WEBB.) Have you that lease with you?—A. No; there is a set of leases. There is not only one lease; there are quite a few leases.

Mr. Manager WEBB. All right, sir. Stand aside.

The PRESIDING OFFICER. Is there a desire to retain this witness?

Mr. WORTHINGTON. No, sir.

The PRESIDING OFFICER. He may be finally excused.

Mr. WORTHINGTON. The examination of the next witness will probably take somewhat longer than the time we have remaining before 6 o'clock.

The PRESIDING OFFICER. It lacks three minutes of the adjourning time, or two minutes and a half. What is the pleasure of the Senate?

Mr. NELSON. I offer the following order.

The PRESIDING OFFICER. The Senator from Minnesota offers the following order, which will be read by the Secretary. The Secretary read as follows:

Ordered, That the proceedings in this case, printed in pamphlet form, be indexed and bound, for the use of the Senate, during the holiday recess of Congress, ready to be furnished Senators, managers, and counsel for the respondent by the 2d of January, 1913.

The PRESIDING OFFICER. The Chair will state for the information of the Senate that the committee which has had charge of the details of this proceeding has already had a clerk engaged in the work of indexing. In view of that fact, it may

not be necessary that the full order be adopted as written, unless it is made to cover the work already done.

Mr. NELSON. It will cover that, Mr. President.

The PRESIDING OFFICER. The question is on the adoption of the order just read. Is there objection?

Mr. REED. Is it not possible to have the time of delivery shortened, so that we can have that record to read before the Senate reconvenes and the trial is resumed? Will it not be possible to have it delivered five or six days sooner than the time stated?

Mr. NELSON. I do not know as to that. I presume it can be printed as soon as it is ready. The object is to have these loose copies bound in a book with an index for our use. I will ask to have the words "as soon as possible" substituted for the words "by the 2d of January, 1913."

The PRESIDING OFFICER. Is there objection to the adoption of the order as modified? If not, it will be considered as unanimously ordered by the Senate. The hour of 6 o'clock has arrived and the Senate sitting as a Court of Impeachment stands adjourned until 1 o'clock and 30 minutes p. m. to-morrow.

The managers on the part of the House of Representatives and the respondent and his counsel retired.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the bill (S. 3175) to regulate the immigration of aliens to and the residence of aliens in the United States with an amendment, in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (S. 6283) increasing the cost of erecting a public building at Olympia, Wash., and it was thereupon signed by the President pro tempore.

REGULATION OF IMMIGRATION.

Mr. LODGE. I ask that the immigration bill as amended by the House of Representatives, which has just been received, may be laid before the Senate.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3175) to regulate the immigration of aliens to and the residence of aliens in the United States, which was to strike out all after the enacting clause and insert a substitute.

Mr. LODGE. I move that the Senate disagree to the amendment of the House and ask for a conference, and that the Chair appoint the conferees on the part of the Senate.

Mr. STONE. Mr. President, I ask that this action be not taken at this time.

Mr. LODGE. Mr. President—

Mr. STONE. Just a moment. I do not care to move, at least I would rather not now move, that the Senate concur in the amendment of the House. I should like to have the bill as passed by the House lie on the table until to-morrow.

Mr. LODGE. The House has struck out all of the Senate bill except the illiteracy test, and that the House has inserted in a slightly different form, but in substance the same. Unless we are prepared to abandon all the administrative features of the bill, which no one suggests, I think concurrence is out of the question. We adjourn to-morrow for the holiday recess, and it is very important that the House should have the opportunity to appoint their conferees to-morrow. They have sent the bill here to-day on that account.

Mr. STONE. Of course, we can not dispose of the bill at this session.

Mr. LODGE. At this session of Congress?

Mr. STONE. I mean before the holiday recess.

Mr. LODGE. There is not the slightest intent of even taking it into conference before that time. The object is merely to get conferees appointed.

Mr. STONE. They can be appointed to-morrow, perhaps, as well as to-day. I should like to have the bill go over, so that I may confer with several Senators who have spoken to me about it on this side before that action is taken. I ask that it may lie on the table.

Mr. LODGE. Mr. President, I do not want to assent to that delay in action on the bill.

The PRESIDENT pro tempore. The Senator from Massachusetts moves that the Senate disagree to the amendment made by the House of Representatives and ask for a conference on the disagreeing votes of the two Houses, and that the Chair appoint the conferees on the part of the Senate.

Mr. STONE. I make the point of no quorum.

The PRESIDENT pro tempore. The Senator from Missouri raises the question of a quorum. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Gallinger	Nelson	Smith, S. C.
Bacon	Hitchcock	Oliver	Smoot
Brandegee	Johnston, Ala.	Overman	Thornton
Bristow	Jones	Page	Townsend
Bryan	Lodge	Pomerene	Warren
Crawford	Martin, Va.	Root	
Fletcher	Martine, N. J.	Smith, Ga.	

The PRESIDENT pro tempore. On the call of the roll 26 Senators have answered to their names—not a quorum.

Mr. LODGE. I move that the Senate adjourn.

The motion was agreed to, and (at 6 o'clock and 8 minutes p. m.) the Senate adjourned until to-morrow, Thursday, December 19, 1912, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, December 18, 1912.

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Our Father in heaven, keep us, we beseech Thee, in all our intercourse with our fellow men in touch with Thee, lest we forget the admonition, "Judge not, that ye be not judged; for with what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again"; that we may put into our daily life that sublime injunction, "All things whatsoever ye would that men should do to you, do ye even so to them; for this is the law and the prophets."

Thus may we hallow Thy name, in the spirit of the Lord Jesus Christ. Amen.

The Journal of the proceedings of yesterday was read and approved.

ONE HUNDRED YEARS OF PEACE.

Mr. MOORE of Pennsylvania. Mr. Speaker, I ask unanimous consent for leave to print in the RECORD an address on One Hundred Years of Peace Among English-Speaking People, delivered in New York recently by the Hon. WILLIAM D. B. AINEY, a Member of this House from the State of Pennsylvania.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent to print in the RECORD the address by his colleague [Mr. AINEY] on One Hundred Years of Peace. Is there objection?

There was no objection.

Address of Hon. WILLIAM D. B. AINEY, Member of Congress, at the dinner given by the American committee for the celebration of one hundred years of peace among English-speaking people to Ambassador Bryce, Hotel Astor, New York, December 13, 1912, Hon. Alton B. Parker, presiding.

Your Excellency, Mr. Chairman, ladies, and gentlemen, it affords me a high sense of privilege to be present with you on this occasion, distinguished and graced by the British ambassador, who has consented to be your guest, and to unite with you in behalf of my colleagues in the Congress of the United States in expressions of felicitation and encomium and in conveying to him America's tribute of great affection.

I am deeply appreciative of the harmonious blending of thought and expression, of person and place, of illustrious guest and purposeful host in this complimentary dinner tendered to Ambassador Bryce by the American committee for the celebration of one hundred years of peace among English-speaking peoples.

America is not unmindful of the diplomatic brilliancy of the distinguished guest; it will not forget him as one deeply versed in history—a man of letters. He will be remembered for his charm of manners and engaging personality, but the emphasis of his accomplished work among us has been in a sense, perhaps, to him unknown. He has interwoven the fibers of his own generous sympathies into the very fabric of American heart life and bound the English-speaking peoples by the cords of love.

A hundred years of peace between elbow-touching nations, wherein the thoughts and purposes of each have run in parallel lines in unbroken course, notes a great era of the world.

The signing of the treaty of Ghent marks a new source from whence spring the fountains of English-speaking history. Since that day the two mighty rivers of Anglo-Saxon life and influence have flowed steadily on and, side by side, never overflowing their banks, but in their onward course bound in the very nature of things to mingle their waters in the great ocean of a common destiny and accomplishment.

It would be interesting to follow them in their history under this figure of speech from small beginnings to the mighty present, and peer, as far as the mere human may, into the region of the coming days.

The similarity is so apparent that it has been oftentimes remarked, common in language, literature, history, and traditions, with similar religious and ethical conceptions, possessed of the same ideas as to the fundamentals in government, they have both sought, through all these means of expression, to obtain and give that liberty which means the exaltation of the individual life to a place where it may fulfill the duty of its created purpose.

The common goal is quite apparent, the waters may overflow the banks, and, God forbid it, wars may come to hinder and delay; but as surely as the day is day, as right is right, and rivers flow to ocean, the Anglo-Saxon problem will ultimately find solution in the broadest and deepest unity of purpose.

Among the world's great thinkers of other races the peculiar aptitude of the Anglo-Saxon to grasp the thought of his own and others' rights in his quest for liberty has been pointed out. He has been intensely but not selfishly individualistic in his views. To him personal liberty has meant individual liberty, if one may here differentiate in terms. Not merely the liberty to throw off restraint, but liberty to do and be and think and to acquire; liberty to express himself in life and influence, to reach the topmost rung, to climb the highest peak, to fulfill within himself the high possibility of his created being.

One hundred years of peace have not been years of sluggish sleep. Great problems have been met and solved, and these in turn have made new problems, which now meet the English-speaking peoples. During this lapse of time the Anglo-Saxon has contributed largely to modern civilization, and in turn received of its benefactions. He has demanded for himself liberty, and he has attained it and has increased in stature by the attainment. With liberty came enlightenment, and this gave him a vision of opportunity, and he has seized upon it.

The rank and file have answered to the Anglo-Saxon cry to step up higher. Thus far their destiny is accomplished. It has brought an influx of great numbers, the inevitable result of our conception of personal liberty, into the activity incident to national governments, and so influencing the international relations. And now they are turning the wheels of our body politic. National consensus of opinion, always potent, rests not now with the few but with the many.

The spirit of unrest, concerning which so much has been said, comes as a necessary sequence in the development of the liberty thought among the English peoples, and it has caused some to question whether after all we have not made a bad solution. I have no fears, nor would I retrograde in Anglo-Saxon purpose, but meet the issue squarely.

The problem is profoundly international; it is intensely national; it is preeminently individual; involved in it are the principles which sustain world peace.

Referring again to the accepted and well-recognized similarity between British and American conditions and thought, as elements contributing materially to a continuance of English peace, it may well be said that men who think alike have little chance to dispute. So strong is this that were the boundary lines of government suddenly removed with their attendant prejudices, the English-speaking people would coalesce, as by the law of attraction, to a common thought and interest.

The point, then, is for us to know that we think alike. This brings international confidence. If we do not know that our neighbor across the line is thinking similar thoughts, having similar hopes, actuated by similar ambitions, we have no common interest in each other. But when we find that he grows roses and we like roses, the door opens and we may go back and forth in newborn comity.

History, travel, commerce, intercommunication, arbitral treaties, and arbitrations lead nations to know each other better and bring about a common understanding—an international public opinion.

Nations express themselves through their peoples and public opinion, considered in the light of the greater number of those whose thought create it, it is more powerful than ever before. It is the power which hereafter can influence war or sustain peace between the English-speaking peoples. It must be addressed; it must be considered; it must be reckoned with.

Mankind yields to two great influences—the intellectual, which affects his judgment, and the moral, affecting his sentiment. The world has ever strongly emphasized the first and too oft minimized the second as being effeminate and intangible.

It has been the intangible, if you please, sympathy, love, honor, patriotic devotion, high unselfishness, which has left its impress in every step of progress in individual or world development. On no other basis can the brotherhood of man be established and maintained; on no other consideration can world peace and home peace be assured. To its gentle attractions the multitudes have ever yielded a ready response; but if it be not offered to the people, what then? There soon is found a lodgment for the world-destroying counterfeit—war-producing hate.

To bring about an international understanding, using the apt term formulated by Dr. Nicholas Murray Butler, so freighted in meaning as to be quickly seized by the English world, we need an "international mind."

We may not stop here, else we fall in our philosophy to realize how much the great world hangs its activities upon the broad sympathies of mankind; the potency of the emotional in man; its quick response to words of love or hate, to kiss or blow; the ready yielding of both men and nations to the common influence of a kindred feeling.

Some years ago an article touching the relations between the United States and Great Britain appeared in the Atlantic Monthly. It closed with a sentiment so high and exalted that I bring it here:

"Though our countries may have no formal alliance,
They have a league of hearts."

The author was your distinguished guest, the sentiment a page from his great heart and life and work.

Let it be paraphrased and then enthroned beside the other one.
Give us then—

An international mind to understand,
An international heart to feel,

and our hundred years of peace are but the beginning of an endless day of peace on earth, good will to men.

DIRECT ELECTION OF UNITED STATES SENATORS.

Mr. RODDENBERRY. Mr. Speaker, I ask unanimous consent to print in the RECORD a report of the committee on resolutions, adopted by the General Assembly of Georgia, relative to the proposed amendment to the Constitution of the United States providing for the direct election of United States Senators by the people. It is the official action of the Legislature of Georgia on that question.

The SPEAKER. The gentleman from Georgia asks unanimous consent to print in the CONGRESSIONAL RECORD the proceedings of the Georgia Legislature on the subject of the constitutional amendment affecting the election of United States Senators by direct vote of the people. Is there objection?

There was no objection.

The report is as follows:

Report of the joint committee of the Legislature of Georgia relative to the resolutions of Congress proposing an amendment to the Constitution of the United States providing for the election of Senators by the people of the several States.

To the General Assembly of Georgia:

Your committee to whom was referred the resolution of the Congress proposing to amend the Constitution of the United States in the matter of the election of the Senators, with instructions to inquire and report whether the amendment is proposed according to the terms of the Constitution report as follows:

In the year 1776 the 13 American Colonies, then subject to the British Crown, jointly published to the nations of the world a declaration of their purpose to sever their connection with the mother country for reasons fully set forth in that instrument. The declaration made was in these words:

"That these United Colonies are and of right ought to be free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is and ought to be totally dissolved, and that as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do."

The Colonies were not at that time united by any other bond than as allies in war.

Upon the issue made by this declaration a war of battle was joined with the State of Great Britain, and the war terminated by a treaty of peace signed at Paris in the year 1783, whereof the first article was as follows:

"His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia to be free, sovereign, and independent States; that he treats with them as such, and, for himself, his heirs, and successors, relinquishes all claim to the government, propriety (?), and territorial rights of the same, and every part thereof."

During the continuance of the war, to wit, in the year 1777 the delegates to the several States agreed tentatively upon certain articles of confederation erecting a form of government mutual to them all, and these articles, being afterwards separately considered and consented to by the several States, each for itself, were signed on the 9th day of July in the year 1778 by the respective delegates of the States, each delegation acting in that matter, in pursuance of specific instructions from their own States directing them so to consent.

The government thus created was styled by these articles "a firm league of friendship." It was in fact but little more than such a league, and in the second article of it specifically maintained the status of the several States as described and recognized in the treaty of Paris in these words:

"Art. II. Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled."

By the fifth of these articles it was provided that each State should annually, and in such manner as its own legislature should determine, appoint delegates to a Congress of the United States "for the more convenient management" of their general interests, the number so selected by any one State to be not less than two nor more than seven, each State maintaining its own delegates, and each State having one vote in the Congress and no more.

The government created by these articles did not prove adequate to its own necessities, and in the year 1787 delegates were selected from the several States to meet in convention at Philadelphia under a resolution of the Congress adopted February 1, 1787, in these words:

"Resolved, That in the opinion of Congress it is expedient that on the second Monday in May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alteration and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union."

In response to this expression from the Congress 12 of the States did send delegates to such a convention, and the present Constitution, except the amendments thereto, was the result of its deliberations, being proposed by the convention in September, 1787, and afterwards, and before the end of the year 1788, ratified and agreed to by 11 of the States, and the new Government put into operation between them. Afterwards, in November, 1789, the State of North Carolina acceded to the new Government, and Rhode Island did likewise in May of the year 1790.

There can be no doubt that the States all showed during the entire period of the negotiations and proceedings extreme solicitude for the preservation unimpaired of their respective sovereignties and an almost jealous apprehension of any possible assumption by the Federal Government of any authority not expressly delegated to it by the free consent of all the States. This solicitude, indeed, found expression in an amendment agreed to so early and so earnestly insisted upon in the ratification of many of the States as a condition upon their consent as to be practically a part of the original Constitution. That amendment stands in these words:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

Nor can there be any doubt that prior to the final adoption of the Constitution no State could be subjected to any new subtraction from its sovereignty except by its own free consent. That is to say, no change in the Constitution could be imposed upon any State prior to that time without its own consent, even though all other States so decreed; a principle clearly illustrated in the fact that, although 11 States agreed at first to the new Constitution as a substitute for the old, no attempt was made to impose its obligation upon Rhode Island or North Carolina.

This principle that no State could ever have any alteration of the Constitution imposed on it except by its own consent was departed from for the first time by the terms of the Constitution of 1787, and then only by the free consent of every State. It is therefore pertinent to look to the question of how this alteration occurred, and see to it that no extension be consented to by implication beyond the exact terms of the original grant.

When the convention of delegates, representing only 12 States, formulated the Constitution, they fully recognized their own want of authority to impose its changes upon any State, and took notice at the same time of the fact that it was impossible to foresee which States would and which would not accede to the new Government. Therefore they wrote into it as the last article this provision:

"The ratification of the convention of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

The ninth State to ratify the Constitution, New Hampshire, did so on June 21, 1788, but Virginia and New York did likewise on June 26, and the new Government went into operation between 11 States.

The fifth article of this Constitution made the first provision ever contemplated by the United States or any of them for the amendment thereof without the unanimous consent of the States, and therefore was the first authority that the States ever consented to for the imposition upon any one of them of any dereliction from its own sovereignty by a vote of the others or of any number of the others. That provision remains of force.

Bearing in mind the historic reluctance of the several States to part with any of their reserved powers, or to permit any impairment of the sovereignty and independence they had wrested in war from the British Crown and so jealously safeguarded in the formation of this Government, it seems but a prudent and proper adherence to our just and honorable traditions to make no further concessions upon this subject, and consent to no changes in the fundamental law except such as are made in strict conformity to its terms.

The provisions on this subject to which our fathers agreed are expressed in the following words:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year 1808 shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Before any State can have imposed upon it any alteration of the Constitution, it is provided by this article that three-fourths of the States must so decree. If three-fourths do so decree, and that decree is elicited in the method pointed out by the Constitution, a State may have new terms imposed upon it or its sovereignty altered or impaired in any way and to any extent whatsoever, except in the sole particular of its right to equal representation in the Senate. The vast possibilities of this power of amendment, therefore, ought to warn every State, in case of proposed amendments, to insist upon exact compliance with every prerequisite stated by the Constitution, and that such insistence should be as jealous and as scrupulous as was the traditional care of our fathers to preserve to each State every vestige of its sovereign power not deemed necessary to be surrendered for the general good.

The obvious prerequisite without which no number of States can impose any alteration in the frame of government on any one of them is in this, that the first step for setting in motion the machinery of amendment shall be in its proposal by two-thirds of each House of Congress. Unless two-thirds do so propose an amendment, it seems hardly open to question that no amendment is possible without a violation of the terms of the covenant.

The only possibility of difference in this matter lies in the question whether the requisite two-thirds means two-thirds of those present in each House or two-thirds of the entire membership of each. The language of the Constitution is "two-thirds of both Houses," and it is at least certain that a literal construction of these words could not mean "two-thirds of those present in each House" or "two-thirds of those present and voting in each House." If there were no other light in the Constitution by which to interpret these words, it would at least be a fair argument to contend that if the framers had intended "two-thirds of those present" they would have said so in unambiguous words.

But it happens that there is other light in that great instrument, for by the third section of the first article, dealing with the question of impeachment, it provides that "no person shall be convicted without the concurrence of two-thirds of the Members present." In like manner the power to make treaties, granted to the President in the second section of the second article, has this condition, "Provided two-thirds of the Senators present concur." By all the approved rules of legal construction, sanctioned by the wise experience of a thousand years, these passages ought to solve all doubts unless some other clause be found to raise a just renewal of the question.

The provision in the fifth section of the first article which constitutes a majority of each House a quorum to do business can not be considered to raise such question, for, obviously, that section refers only to the general ordinary course of normal legislation, and if it had any application to extraordinary matters no necessity would have existed for the provision that in case of impeachment the two-thirds required to convict means two-thirds of those "present."

Impeachments are in the nature of bills of attainder, of such high authority as are not necessary to be based on previous statute defining and prohibiting the offense, and are therefore extraordinary in their nature. The treaty power is perhaps most dangerous to the reserved sovereignty of the States, for under it the President, with the requisite advice and consent, may exercise far-reaching power over them. Amendment of the Constitution, for reasons already stated, is in much higher degree an extraordinary power. Indeed, we feel safe in saying, in view of the history herein set forth, that to no subject whatever did the prudent men who framed the Government give more cautious attention than to the fixed purpose that each State should reserve its sovereignty undiminished and incapable of abatement except upon its own consent. All these acts of Congress therefore require a larger vote than any ordinary legislation. In two of them the consent of two-thirds of those "present" is required. In the other the consent of two-thirds of each House is needed. It seems impossible to doubt that the difference in the language used by the exact men who wrote the Constitution was designed.

These considerations, it seems to us, are greatly emphasized by the fact that, if the meaning we have attached to the Constitution in this regard be not the true one, then it follows that barely more than one-third of each House could set in motion the extraordinary machinery which might result in the subtraction from a State of some vital portion of its sovereignty without its own consent. Such a possibility

is wholly inconceivable as having been consented to by the grave and cautious men who framed the Constitution and so jealously guarded the sovereignty of the several States therein.

The amendment proposed by the Congress and referred to this committee did not receive two-thirds of each House and therefore was not proposed to the States in the manner pointed out by the Constitution for its own amendment.

This fact raises the unavoidable inquiry as to what course should now be taken by the States to whom the amendment is proposed. Without regard to the merits or demerits of the proposal, and although the legislatures of them all might desire the amendment made, it seems to your committee to be but a matter of reasonable prudence to determine that those States are jealously mindful of their rights and scrupulous to observe the Constitution and preserve it unimpaired, should decline to take action at all on the proposed amendment until it shall have first been submitted exactly in the method pointed out by the Constitution. To do otherwise is to consent to an unauthorized power never delegated by the States to the Congress and to disregard the solemn teachings of experience. In interpreting the Constitution on this subject the States are not bound by the precedent of any congressional determination.

But the terms of the resolution direct this committee further to report whether the proposed amendment, if properly initiated and ratified, will involve any surrender by this State of any measure of control over its own suffrage.

The first step in the selection of a Senator now occurs at the ballot box, when we choose our legislature. It is certain that Congress is wholly without authority at the present time for interference there. It can not prescribe the qualifications of the electors nor can it be pretended that it can interfere in any way with the registration or the balloting. It can not now determine the time nor manner in which we set in motion or conduct this initial step in our selection of our own peculiar representatives.

But the Constitution does not confer upon the Congress now the power to prescribe the time and manner in which the legislatures of the several States shall choose their Senators. If we consent, as is proposed, to eliminate the authority of the legislature now interposed between the people at the ballot box and the choosing of the Senator, and do not at the same time stipulate for a withdrawal of the power heretofore delegated to the Congress in this particular in the fourth section of the first article of the Constitution, that grant of power will take on a different quality, not belonging to it now upon any just interpretation of its terms, and will by inevitable consequence give to Congress a power it has not now, and will subtract from the State a power which the State now holds by unquestionable right, to wit, the power to fix the time and manner in which the people of Georgia shall indicate at the ballot box their choice for their own Senators.

What will be the extent and meaning of this power to fix the manner of election if such change is made as is proposed will be a question open at least to doubt. We ourselves should not be disposed to think that it would include the right to regulate the terms and manner of the registration, but language recently used upon the floor of the Federal Senate, in answer to an inquiry from one of our own Senators, warns us to expect at least the possibility of interpretations to be attempted far more strained than that. Warned by past experience, the State of Georgia ought not to forget that in times of high political excitement partisans are able to find strange powers in the instrument of union and justify themselves in the doing of things that in more tranquil seasons they would themselves condemn as being directly violative of its prohibitions. There are times when to doubt should be to be resolved.

It seems to your committee that this is a case in which it is necessary to change the language of the Constitution in order to preserve its meaning. If we alter the constitutionally appointed method of choosing Senators, as is proposed, and do not withdraw the power of statutory regulation, the statute is likely to be more potent than the Constitution, and the power delegated be something other than was meant in its delegation.

If your committee could believe it to be within the scope of its instructions to consider or report upon the wisdom of the policy of delegating to the Federal Congress any authority over the time, place, or manner in which a State shall choose its own Senators and Representatives, we think it might well be doubted whether there ever was any necessity or just reason for such a delegation of authority, or whether any good purpose is attained even in the case of Representatives in the more numerous branch of the Congress. But we conceive our instructions to have been complied within this matter when we point out, as we have endeavored to do, the exact particulars in which the adoption of the proposed amendment derogates anew from our reserved powers and adds to the authority of Congress.

Your committee believes that it can safely declare the people of Georgia to be very largely in favor of so amending the Constitution of the United States as to provide for the popular election of Senators. Indeed the people of this State, under the operation of their voluntary party primaries, have used to so elect for many years; and it seems to us hardly possible to doubt that they are almost unanimous in favor of such change. We believe it to be almost equally as certain that neither for that nor any reason whatsoever would any considerable number of the people of Georgia ever endure the suggestion that we ought to surrender the least vestige of our control over our own suffrage or our own elections. It is not needful that we discuss the reasons for this attitude of our people. It is, in our judgment, a closed question in Georgia.

In view of the considerations expressed in this report we recommend that the general assembly agree to this report as in the nature of a preamble and to the following resolutions based thereon:

1st. That the Legislature of Georgia can not consent to receive or act upon any proposal for the amendment of the Federal Constitution, until the same is made by two-thirds of the full membership of each House of the Congress, and conceives it to be in derogation of the reserved rights of the States for any amendment to be proposed until it receives such vote.

2d. That the governor be, and he is hereby, directed to return to the proper office of the United States from which it emanated, the communication proposing an amendment as to the election of Senators, with the respectful protest of this State against the proposal as having been made by less than the requisite vote and therefore in derogation of the Constitution.

3d. That a copy of these resolutions and of the report in which the same are embodied be communicated to our Senators and Representatives in the Congress, with the request that the same be brought to the attention of that body.

4th. That the governor be, and he is hereby, directed to communicate like copies to the governors of the several States of the Union, with

the request that the same be laid before their respective legislatures as an expression of the sentiment of this State, and in the hope that all the States may join with Georgia in earnest insistence that the Congress do not hereafter propose amendments to the Federal Constitution otherwise than upon the vote of two-thirds of the entire membership of each House thereof.

5th. That in the interest of candor we conceive it proper to say that the State of Georgia will be prompt to agree to the election of Senators by the people of the respective States, if the proposal therefor be made in what we conceive to be the method provided by the Constitution for its own amendment, but not in any terms which derogate in any degree whatsoever, directly or consequentially, from our reserved right of entire and unqualified control over our own suffrage, registration, and elections.

Respectfully submitted.

J. E. SHEPPARD,
W. T. ROBERTS,
Committee on behalf of Senate.
HOOPER ALEXANDER,
J. RANDOLPH ANDERSON,
Committee on behalf of House.
JOHN N. HOLDER,
Speaker of House.
JOHN T. BOIFEUILLET,
Clerk of House.
JOHN M. SLATON,
President of Senate.
C. S. NORTHERN,
Secretary of Senate.

Approved August 19, 1912.

JOSEPH M. BROWN, Governor.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed the bill (S. 2118) to aid in the erection of a monument to Pocahontas at Jamestown, Va., in which the concurrence of the House of Representatives was requested.

SENATE BILL REFERRED.

Under clause 2 of Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee as indicated below:

S. 2118. An act to aid in the erection of a monument to Pocahontas at Jamestown, Va.; to the Committee on the Library.

BRIDGE ACROSS SNAKE RIVER, JACKSON HOLE, WYO.

Mr. SMITH of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 3947) to provide for a bridge across Snake River, Jackson Hole, Wyo., with House amendments thereto, insist on the House amendments, and agree to the conference asked for by the Senate.

The SPEAKER. The gentleman from Texas asks unanimous consent to take from the Speaker's table the bill S. 3947, with House amendments thereto, insist on the House amendments, and agree to the conference asked for by the Senate. Is there objection?

There was no objection.

The SPEAKER appointed the following conferees on the part of the House: Mr. SMITH of Texas, Mr. RUCKER of Colorado, and Mr. KINKAID of Nebraska.

CALENDAR WEDNESDAY.

The SPEAKER. This is Calendar Wednesday.

Mr. BURNETT. Mr. Speaker, I move that the House dispense with Calendar Wednesday for this day.

Mr. MANN rose.

The SPEAKER. The gentleman from Illinois is entitled to five minutes.

Mr. MANN. Mr. Speaker, on various occasions there have seemed to be reasons for dispensing with Calendar Wednesday. I remember when the railroad bill was before the House in 1910 the House was very anxious to proceed with the consideration of that bill. The House was considering it on a Tuesday. I desired to obtain the consent of gentlemen on the Democratic side to dispense with Calendar Wednesday on the following day, in order that we might proceed with the railroad bill. Objection was made by gentlemen at that time. I think it was the understanding at that time, although that bill was of the greatest importance, that the House ought not to break down the rule for Calendar Wednesday. It is quite certain that if the House, because it has a bill under consideration that it desires to pass, begins to dispense with Calendar Wednesday when Calendar Wednesday stands in the way, that Calendar Wednesday will have passed out of existence, practically, because it will seldom happen that Tuesday night will come without some measure under consideration which might be continued on Wednesday morning. The country hailed with delight the reform in the rules providing for Calendar Wednesday, for the purpose of insuring one day in the week on which bills reported from committees might be considered without either asking the Speaker for recognition or the Committee on Rules for a special rule.

Now it is proposed by the gentleman to dispense with Calendar Wednesday. The gentleman who makes the motion might

have called up his bill on Calendar Wednesday. Instead of that he chose to resort to the Committee on Rules, and he now proposes to take a step backward and abolish Calendar Wednesday. As long as the rules provide for a calendar day called Wednesday it seems to me the House ought to stand in favor of maintaining the integrity of that rule and that day. [Applause on the Republican side.] The gentleman has the right to proceed with his bill to-morrow, and it is not necessary in order to pass the immigration bill to break down this day. I regret that some gentlemen may assume that my opposition to the motion now is because I have not favored the House amendment to the immigration bill; but we have had this question up in the House on several occasions when the House desired to pass a bill and yet refused to break down the rule for Calendar Wednesday. All of the reforms proposed by the other side of the House to the rules they are gradually dispensing with. We had a great reform in a rule for a committee discharge. They have taken out of that all that amounts to anything. There has been no opportunity in this House for a year to move to discharge a committee from further consideration of a bill. You have ruined that reform that you proposed and you now propose to take the bowels, the whole life, out of the rule providing for Calendar Wednesday, and I protest against that—

Mr. GARDNER of Massachusetts. Mr. Speaker, will the gentleman yield?

Mr. MANN. And the distinguished gentleman from Massachusetts [Mr. GARDNER] who now interrupts me was one of the men favoring the rule then and now proposes to knife it.

The SPEAKER. The time of the gentleman has expired.

Mr. BURNETT. Mr. Speaker, it comes with poor grace from the gentleman from Illinois, after the motion he made and the attempt he made yesterday to prevent the consideration of the immigration bill, for him to talk about it being an outrage to dispense with Calendar Wednesday and call up this bill. [Applause on the Democratic side.] We were right on the eve of the passage of the bill. Many gentlemen made their arrangements to go to their homes last night and to-night. Now, if we pass this bill over until Thursday, there might not be a quorum here. I do not say that is the motive of the gentleman, but that would practically be the result. Calendar Wednesday is no more sacred than the rule which provides for dispensing with Calendar Wednesday by a two-thirds vote. It is part of the rule creating Calendar Wednesday, and there is no more important measure, Mr. Speaker, before this Congress or before the American people [applause on the Democratic side] than this immigration bill. We have had a six-year filibuster against this bill, and now we have come to the point of its passage, concerning which the country is so insistent and so urgent, and therefore I insist that we can certainly suspend one Calendar Wednesday in order that we may meet the demands of the people and of right for the passage of this bill. Mr. Speaker, I ask for a vote. [Applause on the Democratic side.]

Mr. MARTIN of South Dakota. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MARTIN of South Dakota. If the pending motion prevails, will the call on next Wednesday morning be precisely where it is this morning?

The SPEAKER. It would, undoubtedly.

The question was taken, and the Speaker announced the ayes seemed to have it.

Mr. MANN. Mr. Speaker, I ask for a division.

The House divided; and there were—ayes 71, noes 33.

Mr. MANN. Mr. Speaker, I make the point of order there is no quorum present.

The SPEAKER. Evidently there is not. The Doorkeeper will close the doors, the Sergeant at Arms will notify absentees, and the Clerk will call the roll.

The question was taken; and there were—ayes 157, noes 67, answered "present" 8, not voting 157, as follows:

YEAS—157.

Adair	Byrnes, S. C.	Dent	Foss
Alexander	Byrns, Tenn.	Denver	Fowler
Allen	Callaway	Dickinson	Francis
Ashbrook	Candler	Dies	French
Austin	Contrill	Dixenderfer	Gardner, Mass.
Ayres	Carlin	Dixon, Ind.	Garner
Bartlett	Clark, Fla.	Edwards	Garrett
Bathrick	Clayton	Evans	Gillett
Beall, Tex.	Cline	Faison	Glass
Beil, Ga.	Collier	Farr	Godwin, N. C.
Blackmon	Cox, Ind.	Forris	Goeke
Borland	Cullopp	Fields	Goodwin, Ark.
Buchanan	Dalzell	Flood, Va.	Greene, Vt.
Burnett	Danforth	Flood, Va.	Gregg, Pa.
Butler	Davis, W. Va.	Floyd, Ark.	Hamilton, W. Va.

Hamlin	La Follette	Padgett	Slayden
Hardy	Lamb	Page	Smith, J. M. C.
Harrison, Miss.	Langley	Payne	Smith, Saml. W.
Hay	Learnot	Pepper	Smith, Tex.
Hayden	Lever	Plumley	Stedman
Hayes	Lewis	Porter	Stephens, Cal.
Heflin	Lindbergh	Post	Stephens, Miss.
Helgesen	Linthicum	Powers	Stephens, Nebr.
Helm	Littlepage	Pray	Stephens, Tex.
Henry, Conn.	Lloyd	Prince	Sterling
Henry, Tex.	Longworth	Raker	Sweet
Hensley	McKenzie	Robinson	Talbott, Md.
Hinds	McKinney	Roddenberry	Townsend
Holland	McLaughlin	Rothermel	Tribble
Houston	Macon	Rouse	Underhill
Hughes, Ga.	Maguire, Nebr.	Rubey	Watkins
Hughes, W. Va.	Martin, S. Dak.	Rucker, Mo.	Webb
Hull	Moore, Tex.	Russell	White
Jacoway	Morgan, Okla.	Saunders	Willis
James	Morrison	Shackleford	Wilson, Pa.
Johnson, Ky.	Morse, Wis.	Sharp	Witherspoon
Johnson, S. C.	Moss, Ind.	Sheppard	Young, Tex.
Jones	Neeley	Simmons	
Kent	Nelson	Sims	
Kopp	Oldfield	Sisson	

NAYS—67.

Alney	Fergusson	Kinkaid, Nebr.	Rees
Ames	Fitzgerald	Kinkead, N. J.	Reilly
Anderson	Foster	Konop	Roberts, Mass.
Bartholdt	Fuller	Lee, Pa.	Rodenberg
Booher	George	Loud	Rucker, Colo.
Bulkley	Goldfogle	McCoy	Sabath
Burke, S. Dak.	Good	McDermott	Sherley
Burke, Wis.	Graham	Madden	Sloan
Burleson	Greene, Mass.	Miller	Steenerson
Campbell	Hamilton, Mich.	Mondell	Stone
Cannon	Hammond	Moore, Pa.	Talcott, N. Y.
Crago	Hill	Morgan, La.	Tilson
Crumacker	Howell	Mott	Towner
Davis, Minn.	Howland	Murray	Volstead
Dupré	Kahn	Needham	Whitacre
Dyer	Kendall	Nye	Wilder
Estopinal	Kennedy	Peters	

ANSWERED "PRESENT"—8.

Browning	Dwight	McGillicuddy	Olmsted
Driscoll, M. E.	Lobeck	Mann	Stevens, Minn.

NOT VOTING—157.

Adamson	Driscoll, D. A.	Langham	Roberts, Nev.
Aiken, S. C.	Ellerbe	Lawrence	Scott
Akin, N. Y.	Esch	Lee, Ga.	Scully
Andrus	Fairchild	Legare	Sells
Ansberry	Focht	Levy	Sherwood
Anthony	Fordney	Lindsay	Slemp
Barchfeld	Fornes	Littleton	Small
Barnhart	Gallagher	McCall	Smith, Cal.
Bates	Gardner, N. J.	McCreary	Smith, N. Y.
Berger	Gill	McGuire, Okla.	Sparkman
Boehne	Gould	McHenry	Speer
Bradley	Gray	McKellar	Stack
Brantley	Green, Iowa	McKinley	Stanley
Broussard	Gregg, Tex.	McMorran	Sulloway
Brown	Griest	Maher	Sulzer
Burgess	Gudger	Martin, Colo.	Switzer
Burke, Pa.	Guernsey	Matthews	Taggart
Calder	Hamill	Mays	Taylor, Ala.
Carter	Hanna	Merritt	Taylor, Colo.
Cary	Hardwick	Moon, Pa.	Taylor, Ohio
Claypool	Harris	Moon, Tenn.	Thayer
Conry	Harrison, N. Y.	Murdock	Thistlewood
Cooper	Hart	Norris	Thomas
Copley	Hartman	O'Shaunessy	Turnbull
Covington	Haugen	Palmer	Tuttle
Cox, Ohio	Hawley	Parran	Underwood
Cravens	Heald	Patten, N. Y.	Vare
Curley	Higgins	Patton, Pa.	Vreeland
Currier	Hobson	Pickett	Warburton
Curry	Howard	Pou	Wedemeyer
Daugherty	Humphrey, Wash.	Prouty	Weeks
Davenport	Humphreys, Miss.	Pujo	Wilson, Ill.
Davidson	Jackson	Rainey	Wilson, N. Y.
De Forest	Kindred	Randell, Tex.	Wood, N. J.
Dickson, Miss.	Kitchin	Ransdell, La.	Woods, Iowa
Dodds	Knowland	Rauch	Young, Kans.
Donohoe	Konig	Redfield	Young, Mich.
Doremus	Korbly	Reyburn	
Doughton	Lafean	Richardson	
Draper	Lafferty	Riordan	

So, two-thirds having voted in favor thereof, the motion was agreed to.

The Clerk announced the following pairs:

On this vote:

Mr. COVINGTON (in favor) with Mr. DOREMUS (against).
 Mr. HARDWICK (in favor) with Mr. VREELAND (against).
 Mr. GUERNSEY (in favor) with Mr. MCGILICUDDY (against).
 Mr. LAFEAN (in favor) with Mr. CONEY (against).
 Mr. SWITZER (in favor) with Mr. BERGER (against).
 Mr. PARRAN (in favor) with Mr. WEDEMAYER (against).
 Mr. HOWARD (in favor) with Mr. THAYER (against).
 Mr. KITCHIN (in favor) with Mr. LOBECK (against).
 Mr. PALMER (in favor) with Mr. SMITH of New York (against).
 Mr. GUDGER (in favor) with Mr. DANIEL A. DRISCOLL (against).
 Mr. MCCALL (in favor) with Mr. COPLEY (against).
 Mr. DOUGHTON (in favor) with Mr. MAHER (against).

For the session:

Mr. LITTLETON with Mr. DWIGHT.
 Mr. PUJO with Mr. MCMORRAN.
 Mr. RIORDAN with Mr. ANDRUS.
 Mr. FORNES with Mr. BRADLEY.
 Mr. ADAMSON with Mr. STEVENS of Minnesota.
 Mr. HOBSON with Mr. FAIRCHILD.
 Mr. SCULLY with Mr. BROWNING.
 Until further notice:
 Mr. MOON of Tennessee with Mr. OLMSTED.
 Mr. STANLEY with Mr. ANTHONY.
 Mr. KORBLY with Mr. WOOD of New Jersey.
 Mr. BURGESS with Mr. MICHAEL E. DRISCOLL.
 Mr. UNDERWOOD with Mr. MANN.
 Mr. SHERWOOD with Mr. DRAPER.
 Mr. SPARKMAN with Mr. DAVIDSON.
 Mr. RICHARDSON with Mr. ESCH.
 Mr. AIKEN of South Carolina with Mr. BARCHFELD.
 Mr. ANSBERRY with Mr. BATES.
 Mr. BARNHART with Mr. BURKE of Pennsylvania.
 Mr. BOEHNE with Mr. CURRIER.
 Mr. BRANTLEY with Mr. CALDER.
 Mr. BROUSSARD with Mr. CARY.
 Mr. CARTER with Mr. DE FOREST.
 Mr. CLAYPOOL with Mr. DODDS.
 Mr. COX of Ohio with Mr. FOCHT.
 Mr. CURLEY with Mr. FORDNEY.
 Mr. DAVENPORT with Mr. GARDNER of New Jersey.
 Mr. GILL with Mr. GREEN of Iowa.
 Mr. DONOHUE with Mr. HARRIS.
 Mr. ELLERBE with Mr. HANNA.
 Mr. GALLAGHER with Mr. HAUGEN.
 Mr. GOULD with Mr. HAWLEY.
 Mr. HAMILL with Mr. HEALD.
 Mr. HARRISON of New York with Mr. HUMPHREY of Washington.
 Mr. HART with Mr. HIGGINS.
 Mr. HUMPHREYS of Mississippi with Mr. JACKSON.
 Mr. KINDRED with Mr. KNOWLAND.
 Mr. KONIG with Mr. LANGHAM.
 Mr. LEE of Georgia with Mr. LAWRENCE.
 Mr. LEGARE with Mr. MCCREARY.
 Mr. LEVY with Mr. MCGUIRE of Oklahoma.
 Mr. MCKELLAR with Mr. MCKINLEY.
 Mr. MARTIN of Colorado with Mr. MATTHEWS.
 Mr. O'SHAUNESSY with Mr. SULLOWAY.
 Mr. PATTEN of New York with Mr. MERRITT.
 Mr. POU with Mr. MOON of Pennsylvania.
 Mr. RAINEY with Mr. PATTON of Pennsylvania.
 Mr. RANDELL of Texas with Mr. MURDOCK.
 Mr. RANDELL of Louisiana with Mr. PICKETT.
 Mr. RAUCH with Mr. PROUTY.
 Mr. BROWN with Mr. WOODS of Iowa.
 Mr. TAGGART with Mr. HARTMAN.
 Mr. TAYLOR of Alabama with Mr. ROBERTS of Nevada.
 Mr. TAYLOR of Colorado with Mr. SCOTT.
 Mr. THOMAS with Mr. SELLS.
 Mr. TURNBULL with Mr. SLEMP.
 Mr. TUTTLE with Mr. SMITH of California.
 Mr. WILSON of New York with Mr. SPEER.
 Mr. LINDSAY with Mr. TAYLOR of Ohio.
 Mr. DICKSON of Mississippi with Mr. VARE.
 Mr. CRAVENS with Mr. WILSON of Illinois.
 Mr. SULZER with Mr. WEEKS.
 Mr. SMALL with Mr. YOUNG of Michigan.
 Until January 10:
 Mr. MAYS with Mr. THISTLEWOOD.
 Mr. BROWNING. Mr. Speaker, I voted "yea." I am paired with my colleague the gentleman from New Jersey, Mr. SCULLY, and I wish to withdraw my vote of "yea" and vote "present."
 The name of Mr. BROWNING was called, and he answered "Present."
 Mr. OLMSTED. Mr. Speaker, I have a general pair with the gentleman from Tennessee, Mr. MOON. Not knowing how he would vote if present, I do not feel at liberty to vote, and desire to be recorded as present.
 The name of Mr. OLMSTED was called, and he answered "Present."
 Mr. MANN. Mr. Speaker, may I ask if the gentleman from Alabama, Mr. UNDERWOOD, voted?
 The SPEAKER. He is not recorded.
 Mr. MANN. I have a general pair with the gentleman. I voted "nay," and I desire to withdraw my vote and vote "present."
 The name of Mr. MANN was called, and he answered "Present."

Mr. LOBECK. Mr. Speaker, I voted "nay." I am paired with the gentleman from North Carolina, Mr. KITCHIN, and I wish to withdraw that vote and vote "present."

The name of Mr. LOBECK was called, and he answered "Present."

The result of the vote was announced as above recorded. A quorum being present, the doors were opened.

ENROLLED BILL SIGNED.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 6283. An act increasing the cost of erecting a public building at Olympia, Wash.

CHANGE OF REFERENCE.

By unanimous consent, the Committee on Arid Lands was discharged from further consideration of the bill (H. R. 12826) providing for the discovery, development, and protection of streams, springs, and water holes in the desert and arid public lands of the United States, for rendering the same more readily accessible, and for the establishment of and maintenance of signboards and monuments locating the same, and the bill was referred to the Committee on Public Lands.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. SCOTT, for two days, on account of illness.

To Mr. COOPER, indefinitely, on account of illness in his family.

To Mr. WARBURTON, until January 10, in order to visit the Panama Canal.

IMMIGRATION.

The SPEAKER. The unfinished business yesterday was the demand of the gentleman from Illinois [Mr. MANN] for the reading of the engrossed copy of the immigration bill.

Mr. MANN. Mr. Speaker, I withdraw the demand for the reading of the engrossed copy of the bill.

The SPEAKER. The Clerk will report the bill by title.

The Clerk read as follows:

An act (S. 3175) to regulate the immigration of aliens to and residence of aliens in the United States.

Mr. MANN. Mr. Speaker, I move to recommit the bill to the Committee on Immigration and Naturalization, with instructions to that committee to report the bill back forthwith with an amendment striking out all after the word "That" and inserting the language which I send to the Clerk's desk.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Amend by striking out all of the bill after the word "That" and inserting the following:

"The word 'alien' wherever used in this act shall include foreign-born, unnaturalized seamen. That the term 'United States,' as used in the title as well as in the various sections of this act, shall be construed to mean the United States, including the Territories of Alaska and Hawaii; and if any alien shall attempt to enter the United States from the Canal Zone, the Philippines, Porto Rico, or any other place outside of the United States but subject to the jurisdiction thereof, such alien shall be permitted to enter only on the conditions applicable to aliens entering the United States from a foreign country. That the term 'seaman' as used in this act shall include every person signed on the ship's articles and employed in any capacity on board any vessel arriving in the United States from any foreign port or place. That nothing in this act shall be construed to apply to accredited officials of foreign Governments nor to their suites, families, or guests."

"Sec. 2. That there shall be levied, collected, and paid a tax of \$5 for every alien, including alien seamen regularly admitted as provided in this act, entering the United States. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner, or consignee of the vessel, transportation line."

Mr. GARDNER of Massachusetts. Mr. Speaker, I raise the point of order that it is not permissible, by a motion to recommit, to attempt to adopt that which was not germane when considered by the House in the first place. I make the point of order that the bill has been read sufficiently far to show that it is not germane to the substitute.

The SPEAKER. The Chair will hear the gentleman from Illinois.

Mr. MANN. Mr. Speaker, the rule that was adopted by the House in reference to the consideration of this bill does not affect the present situation at all. The only application of that rule was that the previous question should be ordered on the bill when reported from the committee. It is true that the Chairman of the Committee of the Whole House on the state of the Union ruled that any amendment which was offered to the committee amendment must be germane to the committee amendment, but he expressly stated that he made that ruling because of the rule that had been adopted by the House governing the action of the Committee of the Whole. That rule

applied only to the action of the Committee of the Whole in the committee.

Here is the situation: Here is a bill, a Senate bill, to regulate the immigration of aliens and the residence of aliens in the United States—a general bill. The Committee of the Whole has recommended and the House has agreed to that bill, striking out all of the original bill and inserting other language. I claim that the entire subject is before the House now. The House is not cut off from the consideration of any portion of it by the rule, because the rule limiting consideration to the committee amendment applied only in the Committee of the Whole. The rule limiting the consideration does not apply to the House. The whole bill is before the House.

I am surprised that the gentleman from Massachusetts [Mr. GARDNER] should make the point of order as to a bill covering the entire subject of immigration pending before the House that it is improper in the House to offer to that bill an amendment which relates to any portion of the immigration subject at all. The whole subject is before the House.

Under the rule that the House has adopted it is true that in accordance with the ruling of the Chair you could only add, by way of amendment, something which was germane to the committee amendment. But here the rule provides that there may be a motion to recommit. We have the entire subject before the House. I do not believe that the Speaker will rule that when a Senate bill covering the entire subject of immigration is under consideration by the House a motion to recommit must apply only to something germane to an amendment which the House has adopted.

The SPEAKER. The Chair will hear the gentleman from Massachusetts.

Mr. GARDNER of Massachusetts. Mr. Speaker, not having anticipated this situation, I have not been able to consult Hinds' Precedents with regard to a motion to recommit; but I am very clear in my own mind that the whole principle of that motion lies in a purpose of giving the House a final review of that which it has decided upon. That which is not permissible for the House to do directly, either in committee or in the House itself, may not subsequently be done under the guise of a motion to recommit. The recommittal stage is in the nature of a fourth reading.

I can not quote the precedents in this case, but I am very confident that the general principle that you may not seek to accomplish by a motion to recommit that which you could not have accomplished directly, either in the Committee of the Whole or in the House, is based on many decisions, which I suppose are easily available.

Mr. MANN. Mr. Speaker, let me call the attention of the Speaker to this fact: The gentleman says that a motion to recommit is not in order which could not have been offered by way of amendment. I agree with that proposition; but the right of amendment in this case was cut off by the previous question. If the previous question had not been operating, it is perfectly clear to anyone that when it was proposed to strike out all of the bill and insert other language any amendment germane to the original bill would have been in order in the House. The previous question being in operation, no such amendment could be proposed; but any motion to recommit is in order, which would have been in order as an amendment if the previous question had not been operating. The proposition here was to strike out the entire Senate bill, a bill covering the general subject of immigration. It is true that no amendment could be offered in the House, because the previous question would shut out the right; but the motion to recommit was preserved, because the Committee on Rules could not report differently.

Under section 5873 of Hinds' Precedents an amendment providing for an educational test for immigration was held to be germane to a bill to regulate the immigration of aliens into the United States. The Chair, in ruling upon it, stated that it being—

a general bill on the subject of immigration, it is not the province of the Chair to pass on the merits or demerits of any amendment or its wisdom or justice. It appears to the Chair that this amendment is clearly, distinctly, and logically connected with the general scope of a bill regulating the immigration of aliens into the United States, and under these circumstances the Chair feels constrained to overrule the point of order and hold that the amendment is germane to the bill.

The SPEAKER. What was the amendment?

Mr. MANN. The amendment was to apply the educational test to a bill regulating the immigration of aliens.

The SPEAKER. That was a general bill regulating immigration.

Mr. MANN. That was a general bill regulating immigration, just exactly like this one.

The SPEAKER. And the educational test was offered as an amendment.

Mr. MANN. The educational test was offered as an amendment.

The SPEAKER. What section of Hinds' Precedents did the gentleman read from?

Mr. MANN. Section 5873.

Mr. FITZGERALD. Will the gentleman yield for a question?

Mr. MANN. Certainly.

Mr. FITZGERALD. Is the gentleman's motion a motion to direct the committee to report the text of the Senate bill?

Mr. MANN. It is not the text of the Senate bill. Even I would know better than to try to do that. [Laughter.] It is very largely similar in many provisions, and is certainly germane to the provisions of the Senate bill and certainly germane to the general subject of immigration.

Mr. HILL. Mr. Speaker, I should like to call attention to what seems to me to be a parallel case. In 1909 the gentleman from New York brought in what was known as the Payne tariff bill, and by a vote of the House certain portions of it were allowed to be voted upon and the rest were not. Of course, those portions only were subject to amendment in the consideration of the bill in accordance with the vote of the House, but when the bill came back into the House the gentleman now occupying the chair [Mr. CLARK of Missouri] offered a motion to recommit proposing an entirely different policy, and it was admitted and voted on. It seems to me that the case is almost parallel to this.

The SPEAKER. The Chair will jog the gentleman's memory a little by stating that nobody raised a point of order against it.

Mr. HILL. I admit it, but the principle is the same, and in this case the same policy is pursued.

The SPEAKER. In that case the gentleman from Connecticut and his confrères were so sure that they could vote down the motion to recommit that they never took the trouble to make a point of order against it.

Mr. HILL. Is not that the condition now?

The SPEAKER. No; the situation is different. The Chair thinks, to add to the story, that if anybody had raised the point of order against the motion to recommit the Speaker would have been compelled to bowl it out and give permission to offer one that was in order.

Mr. GARDNER of Massachusetts. Mr. Speaker, I invite the attention of the Chair to a ruling made on the 8th of May, 1911, by Speaker CLARK. It will be found on page 1120 of the RECORD of the first session of this Congress. The gentleman from Illinois [Mr. MANN] offered a motion to recommit a tariff bill—the farmers' free-list bill, I think—inserting as section 2 of the bill a certain paragraph. After a good deal of discussion the Speaker decided the question as follows:

It is not necessary for the Chair to pass any opinion on the wisdom or unwisdom of this new rule. It is his duty to decide according to the rule. It is clear that the amendment offered by way of a motion to recommit under this rule would not have been in order if offered as an amendment, and on the high authorities of Speaker REED and Speaker CANNON, I sustain the point of order made by the gentleman from Alabama.

The gentleman from Illinois [Mr. MANN] appealed from the decision of the Chair, and the Chair was sustained by a vote of 209 as against 129. The gentleman from Massachusetts voted in the negative.

Mr. MANN. Mr. Speaker, the gentleman from Massachusetts is in error as to what rule the Speaker was referring to when he referred to this new rule. The gentleman from Massachusetts says he had reference to the motion to recommit; that was not the case, as I remember it. The gentleman has the papers before him, and I do not have, but he can correct me if I am in error. My recollection is that the Speaker had reference to this rule, which was a new rule, the motion to recommit being as old as the hills. It is the rule under which the Speaker decided that question:

No amendment shall be in order to any bill affecting revenue which is not germane to the subject matter in the bill; nor shall any amendment to any item of such bill be in order which does not directly relate to the item to which the amendment is proposed.

When I offered the motion to recommit at that time I did it for the purpose of emphasizing the fact that a rule had been adopted specially relating to tariff legislation which took that kind of legislation out from the general provision in reference to offering amendments and motions to recommit.

The Speaker was probably right in his ruling on that question, but that was under the special rule limiting the right of amendment on tariff legislation, and by itself indicates that without that special rule the motion to recommit, such as I have offered, is germane on other matters.

This is not an entirely new proposition. When the immigration bill was before the House in the Fifty-ninth Congress there was a provision in it with reference to an educational

test. The bill was considered under a special rule providing for amendment, I believe, to two sections of the bill, one of them being the educational test. The gentleman from Ohio, Mr. Grosvenor, proposed an amendment to strike out the section providing for the educational test and to insert in place of it a new section providing for a commission to study the whole subject of immigration. The gentleman from Massachusetts at that time made the same point of order which he makes now, that the proposed amendment offered by the gentleman from Ohio, Mr. Grosvenor, was not germane. But the Chairman ruled that it was germane, and held it in order, and it was adopted, although it was not germane to the particular section. It was germane to this bill, it being a general immigration bill, and on the strength of that the Chair held, and properly held, that it was a proper amendment. The same kind of amendment would have been in order in Committee of the Whole at this time if it had not been for the gag rule which was passed to prevent amendments except the one that the Committee on Rules favored. But the operation of that rule has ceased, except so far as the previous question applies.

Mr. GARDNER of Massachusetts. Mr. Speaker, the decision to which the gentleman from Illinois alludes is distinctly the worst decision I ever heard made in that chair.

Mr. MANN. Many people think that when they are overruled. They always "cuss" the court.

Mr. GARDNER of Massachusetts. Will the gentleman yield to me?

Mr. MANN. If the gentleman desires, I will be glad to yield to the gentleman, although I dislike to hear him libel a splendid former Member of Congress and one of the greatest Chairmen we ever had.

Mr. GARDNER of Massachusetts. Mr. Speaker, I am familiar with that decision, because it was at the time of the hair-pulling match six years ago upon this educational test. By the terms of the special rule under which we were operating at that time only 2 sections of the long bill of 38 or more sections were open to amendment. Nobody on earth thinks a provision for an immigration commission is germane to an educational test, and yet it was practically so decided at the time. The Chair in his ruling began by saying that inasmuch as no one had seen fit to raise a point of order against a certain previous amendment offered by Mr. Littauer, therefore Members were estopped in the case of the Grosvenor amendment. The Chair admitted that the Littauer amendment was not strictly in order, and clearly indicated his belief that the Littauer amendment and the Grosvenor amendment involved the same question of order. Then he went on to say that owing to the exceptionally narrow rule under which the bill was being considered, permitting, as it did, amendments to only 2 out of some 38 sections, he considered the case worthy of exception, and so he held the Grosvenor amendment to be in order.

Mr. MONDELL. Mr. Speaker, will the Chair indulge me for a moment upon this question?

The SPEAKER. The Chair will hear the gentleman briefly, although the Chair is ready to rule.

Mr. MONDELL. Mr. Speaker, it seems to me this matter is very clear. The House is about to vote on the bill S. 3175, an act to regulate the immigration of immigrants into the United States—an act covering the entire subject. A motion to recommit is offered by the gentleman from Illinois [Mr. MANN] under paragraph 4 of Rule XVI.

The SPEAKER. What does the gentleman from Wyoming say is before the House?

Mr. MONDELL. The bill S. 3175.

The SPEAKER. Is that whole bill before the House?

Mr. MONDELL. Clearly, Mr. Speaker, it is, as I was going on to elucidate. Assuming that the statement I have made is a correct statement, that the House has before it this bill and is about to vote upon it, the gentleman offers a motion to recommit under the rule. That motion is in order if germane to this bill and its provisions, and clearly the motion made by the gentleman from Illinois is germane to the general provisions of the bill. It is true, Mr. Speaker, that we considered this bill under a special rule, but that special rule can not be construed to in any way affect paragraph 4 of Rule XVI. There is a provision of the rules that no special rule shall take away or modify the rights under the motion to recommit. After the motion for the previous question prevailed the special rule ceased to operate. The House is now considering this measure as though it had been taken up in the usual way under the rules. As a matter of fact, if we are to assume that the special rule still operates, still the motion is in order, because the special rule simply gave precedence to a certain amendment and did not, as the gentleman from Wisconsin assured us, and as the gentleman from Massachusetts assured us, prevent the House

from the consideration of the entire subject matter contained in the Senate bill after the privileged amendment offered by the committee had been considered. The fact that the House did not see fit to consider the Senate bill does not change the situation. So whichever way you take it, even assuming that we are operating under the rule, and I do not believe we are, the gentlemen who defend that rule all insist that the rule has no other effect, that nothing else was intended but to give the House an opportunity to first take up a certain amendment, and then, if it so desired, to consider the entire matter. But if we take the other horn of the dilemma, assume the other, which I believe to be the correct view of the matter, that we are now proceeding under paragraph 4, Rule XVI, independent of the special rule, then clearly the House has before it this bill and all it contains and any motion to recommit germane to the general proposition contained in the bill is in order.

The SPEAKER. The Chair is ready to rule. The rule about motions to recommit is simple enough in its statement, though it is sometimes difficult to apply it. It is that the propositions contained in a motion to recommit must have been germane to the subject matter of the bill if offered as an amendment. The special provision which the gentleman from Illinois has cited on two or three occasions in his argument, that in revenue bills the amendment must be germane both to the particular item that is pending as well as to the general bill, has nothing to do with this controversy. That was a special provision, made for special reasons. The situation in this case is very peculiar. The Chair does not believe that a similar situation has arisen in the 18 years he has been in the House. In the first place, this special rule is peculiar. It contains a provision that the Chair does not remember ever to have seen in one before; and while the House got out from under that rule when it got back into the House, still the Chair will read the rule and see what the House was trying to do and what the House intended to do:

Resolved, That immediately upon the adoption of this resolution the House shall resolve itself into the Committee of the Whole House on the state of the Union for the consideration of S. 3175, with the amendment reported by the House Committee on Immigration and Naturalization.

Of course, everybody who paid any attention to the debate knows the amendment was a substitute and covered everything the House wanted to do.

That there shall be four hours' general debate, to be divided equally between those favoring and those opposing the measure. At the expiration of said four hours' general debate the same shall be considered under the five-minute rule as follows: The amendment proposed by the House committee shall be first read for amendment and perfected. After same has been so perfected the vote shall be taken upon the question of the adoption of said amendment. If same shall be adopted, then the Senate bill shall not be read—

That is the remarkable statement in that rule. If it ever was in any other, the Chair has forgotten it—

If same shall be adopted, then the Senate bill shall not be read, but the committee shall rise and report the measure to the House. If it shall not be adopted, then the Senate bill shall be considered for amendment under the five-minute rule, and when perfected the committee shall rise and report the same to the House. Immediately upon the perfected measure being reported to the House the previous question shall be considered as ordered upon the bill and all pending amendments to final passage—

And there was only one amendment, that is the committee amendment, and it was not changed in a single respect—and all pending amendments to final passage without intervening motions, except one motion to recommit. But a separate vote may be demanded upon any amendment or amendments thereto adopted by the Committee of the Whole.

The only purpose of reading that rule was to show what the House was trying to get at. Evidently the intention of the House was to consider the educational test and nothing else. The Senate bill has never even been read to the House. The question before the House is evidently this educational test and nothing else.

Mr. MANN. Will the Speaker pardon me for making a suggestion?

The SPEAKER. Certainly.

Mr. MANN. The rules reserve the right of the minority to make a motion to recommit. Under the rules the Committee on Rules can not even report a rule which affects the right of the minority to make a motion to recommit.

The SPEAKER. The Chair knows that, but that is a stringent provision to safeguard the rights of the minority—not the political minority but the legislative minority—on any particular measure.

Mr. MANN. I understand; but the adoption of a rule by the House can not affect the right of the minority to make a motion to recommit, which they would have the right to make if no rule was adopted in the House, because the majority, under the rule, can not take away by special rule the right of the minority to test the sense of the House on a motion to re-

commit, but if the Speaker holds that having adopted a special rule whereby the minority lost a portion of its right to recommit, that rule will be rendered somewhat innocuous.

The SPEAKER. The Chair does not mean to rule that the minority lost any of their rights. The Chair says this, that the propositions contained in a motion to recommit must have been propositions which would have been germane if offered as amendments.

The Senate bill discusses the whole question of immigration. It defines the terms to be used. It has a section in it as to what shall happen to people in the Philippines, and so on, and so on, to the end of the bill. But the House indicated its intentions to hold this matter down to the educational test. That is all the Chair reads this special rule for. Under the rule the gentleman from Illinois [Mr. MANN] could not offer the propositions in this motion to recommit as amendments in the Committee of the Whole. The House was so determined that it would not consider the Senate bill that it provided it should not be even read—a most extraordinary provision.

There is another thing about this. The Chair has held—this occupant of the chair, and it was held before, although not quite so elaborately as the present Speaker stated it, because the matter had not been argued, I suppose, so vociferously—but on one occasion the Chair held that you could not do by indirection, in a motion to recommit, what you could not do by direction, and the Chair was backed up by the authority of a long line of illustrious Speakers. They did not go into it as fully as I did. You can not take a proposition that has been ruled out directly by the House and put it back again by a motion to recommit.

As far as the suggestion of the gentleman from Connecticut [Mr. HILL] is concerned, when the Payne tariff bill reached the proper stage I offered a motion to recommit, largely for the sake of expressing my own opinion about the tariff subject, and I set forth in that motion to recommit most of the propositions that I thought ought to be put into a tariff bill. Some of them had nothing to do with the things which properly would have been in a motion to recommit, and I knew it as well as anybody else did when I offered it.

I supposed that somebody on that side would raise the parliamentary point against it. If that had been done, I had another motion in my pocket to recommit that would have been in order. But nobody raised the point, and consequently they voted on my motion to recommit and voted it down by a substantial majority, which I expected they would do.

In this case clearly the only thing about immigration before this House is the educational test. If the general Senate bill had been pending and the previous question had not been ordered, and the gentleman from Illinois [Mr. MANN] or any other gentleman had offered the educational test as an amendment to a general immigration bill, the Chair would have held it in order, because it would have been in order. But this situation turns the question squarely around. The matter pending before this House is on the educational test. This motion of the gentleman proposes to recommit with an entire immigration bill as an amendment. Consequently the point of order is sustained. [Applause.] The question is, Shall the bill pass?

The question was taken, and the Chair announced that the noes seemed to have it.

Mr. BURNETT. Division, Mr. Speaker.

The House divided; and there were—ayes 123, noes 37.

Mr. SABATH. Mr. Speaker, I raise the point of no quorum.

Mr. MOORE of Pennsylvania. Mr. Speaker—

The SPEAKER. Evidently there is not a quorum present.

Mr. MOORE of Pennsylvania. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. MOORE of Pennsylvania. If there is a call of the House now it would mean that we would vote "yea" or "nay," I understand, on the bill before the House?

The SPEAKER. Of course.

Mr. MOORE of Pennsylvania. May I ask whether the vote will be in favor of the Senate bill and the House amendment?

The SPEAKER. The practical effect of it is to adopt the House bill, if you get a majority in favor of it.

Mr. MOORE of Pennsylvania. Pardon me one moment, Mr. Speaker. Several times in the early stages of the discussion, and particularly in the Chair's announcement of his decision on the point of order raised by the gentleman from Illinois [Mr. MANN], the Speaker referred to the House amendment as a substitute to the bill.

The SPEAKER. The Chair referred to it as being in the nature of a substitute.

Mr. MOORE of Pennsylvania. That left the impression upon the minds of many of the Members that they were to vote

ultimately on the House amendment which embodied the educational test.

The SPEAKER. That is all they are voting on.

Mr. MOORE of Pennsylvania. Then there is nothing—

Mr. GARRETT. Did the Chair announce that there was no quorum?

The SPEAKER. The Chair did not formally announce it.

Mr. GARRETT. I understood the Chair announced that there was no quorum present.

The SPEAKER. Evidently there is not a quorum present. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll. Those in favor of the bill as amended—that is, this House substitute—will vote "yea" and those opposed "nay."

Mr. MOORE of Pennsylvania. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. MOORE of Pennsylvania. When we vote now do we vote only upon the question of the educational test as embodied in the House amendment or does that vote include—

The SPEAKER. That is exactly what you vote upon.

Mr. MOORE of Pennsylvania. And not upon the Senate bill, which has not been discussed?

The SPEAKER. Technically you are voting on the Senate bill, but really you are voting on the House bill.

Mr. LANGLEY. Of course, everybody understands that this is the last vote on the proposition.

Mr. CANNON. Does this vote pass the House bill?

The SPEAKER. Yes; the House amendment has already been adopted.

Mr. JAMES. The regular order, Mr. Speaker.

Mr. MOORE of Pennsylvania. Then we are compelled to vote on both bills.

The SPEAKER. If you are in favor of the educational test, on this roll call vote "yea"; and if you are opposed to it, vote "nay."

The question was taken; and there were—yeas 179, nays 52, answered "present" 8, not voting 150, as follows:

YEAS—179.

Adair	Ferris	Humphreys, Miss.	Post
Alney	Fields	Jacoway	Pou
Alexander	Finley	James	Powers
Allen	Flood, Va.	Johnson, Ky.	Pray
Ames	Focht	Johnson, S. C.	Prince
Anderson	Foss	Jones	Raker
Ashbrook	Foster	Kennedy	Rauch
Austin	Fowler	Kent	Redfield
Ayres	Francis	Kinkaid, Nebr.	Rees
Bartlett	French	Kopp	Roberts, Nev.
Bathrick	Fuller	La Follette	Roddenbery
Beall, Tex.	Gardner, Mass.	Lamb	Rothermel
Bell, Ga.	Garner	Langley	Rouse
Blackmon	Garrett	Lawrence	Rubey
Borland	Gillett	Lee, Ga.	Rucker, Colo.
Browning	Glass	Lever	Rucker, Mo.
Buchanan	Godwin, N. C.	Lewis	Russell
Burke, S. Dak.	Goeke	Lindbergh	Saunders
Burnett	Good	Linthicum	Shackleford
Butler	Goodwin, Ark.	Littlepage	Sharp
Byrnes, S. C.	Greene, Vt.	Lloyd	Sheppard
Byrns, Tenn.	Gregg, Pa.	Longworth	Slimmons
Callaway	Hamilton, Mich.	McGuire, Okla.	Sims
Candler	Hamilton, W. Va.	McKinney	Slayden
Cantrill	Hamlin	McLaughlin	Small
Carlin	Hardy	Macon	Smith, J. M. C.
Carter	Harrison, Miss.	Maguire, Nebr.	Smith, Saml. W.
Clark, Fla.	Hay	Martin, S. Dak.	Smith, Tex.
Collier	Hayden	Mondell	Stedman
Cox, Ind.	Hayes	Moore, Tex.	Stephens, Cal.
Crago	Heflin	Morgan, Okla.	Stephens, Miss.
Cullop	Helgesen	Morrison	Stephens, Tex.
Dalzell	Helm	Morse, Wis.	Sweet
Danforth	Henry, Conn.	Moss, Ind.	Talbot, Md.
Davis, Minn.	Henry, Tex.	Mott	Tribble
Dent	Hensley	Needham	Underhill
Denver	Hill	Neeley	Warburton
Dickinson	Hinds	Nelson	Watkins
Dies	Holland	Oldfield	White
Diffenderfer	Houston	Padgett	Willis
Dixon, Ind.	Howell	Page	Wilson, Pa.
Edwards	Hughes, Ga.	Payne	Witherspoon
Evans	Hughes, W. Va.	Pepper	Young, Kans.
Falsion	Hull	Plumley	Young, Tex.
Farr	Humphrey, Wash.	Porter	

NAYS—52.

Ansberry	Dyer	Lee, Pa.	Roberts, Mass.
Barchfeld	Estopinal	Loud	Rodenberg
Bartholdt	Fergusson	McCoy	Sabath
Booher	Fitzgerald	McDermott	Scully
Bulkley	Gallagher	Madden	Sherley
Burke, Wis.	George	Miller	Stephens, Nebr.
Burleson	Goldfogle	Moore, Pa.	Stone
Campbell	Graham	Morgan, La.	Tilson
Cannon	Greene, Mass.	Murray	Townsend
Curley	Hammond	Nye	Volstead
Curry	Kendall	O'Shaunessy	Wilder
Donohoe	Kinkead, N. J.	Peters	Young, Mich.
Dupré	Konop	Relly	

ANSWERED "PRESENT"—8.

Burgess	Dwight	McGillcuddy	Sloan
Driscoll, M. E.	Lobeck	Mann	Stevens, Minn.

NOT VOTING—150.

Adamson	Ellerbe	Langham	Sells
Aiken, S. C.	Esch	Legare	Sherwood
Akin, N. Y.	Fairchild	Lenroot	Sisson
Andrus	Floyd, Ark.	Levy	Slomp
Anthony	Fordney	Lindsay	Smith, Cal.
Barnhart	Fornes	Littleton	Smith, N. Y.
Bates	Gardner, N. J.	McCall	Sparkman
Berger	Gill	McCreary	Speer
Boehne	Gould	McHenry	Stack
Bradley	Gray	McKellar	Stanley
Brantley	Green, Iowa	McKenzie	Steenerson
Broussard	Gregg, Tex.	McKinley	Sterling
Brown	Griest	McMorran	Sulloway
Burke, Pa.	Gudger	Maher	Sulzer
Calder	Guernsey	Martin, Colo.	Switzer
Cary	Hamill	Matthews	Taggart
Claypool	Hanna	Mays	Talcott, N. Y.
Clayton	Hardwick	Merritt	Taylor, Ala.
Cline	Harris	Moon, Pa.	Taylor, Colo.
Conry	Harrison, N. Y.	Moon, Tenn.	Taylor, Ohio
Cooper	Hart	Murdock	Thayer
Copley	Hartman	Norris	Thistlewood
Covington	Haugen	Olmsted	Thomas
Cox, Ohio	Hawley	Palmer	Turnbull
Cravens	Heald	Parran	Tuttle
Crumpacker	Higgins	Patten, N. Y.	Underwood
Currier	Hobson	Patton, Pa.	Vare
Daugherty	Howard	Pickett	Vreeland
Davenport	Howland	Prouty	Webb
Davidson	Jackson	Pujo	Wedemeyer
Davis, W. Va.	Kahn	Rainey	Weeks
De Forest	Kindred	Randell, Tex.	Whitacre
Dickson, Miss.	Kitchin	Randell, La.	Wilson, Ill.
Dodds	Knowland	Reybun	Wilson, N. Y.
Doremus	Konig	Richardson	Wood, N. J.
Doughton	Korbly	Riordan	Woods, Iowa
Draper	Lafean	Robinson	
Driscoll, D. A.	Lafferty	Scott	

So the bill was passed.

The Clerk announced the following additional pairs:

For this vote:

Mr. SWITZER (in favor of Burnett bill) with Mr. BERGER (against).

Mr. HOWARD (in favor of Burnett bill) with Mr. THAYER (against).

Mr. COVINGTON (in favor of Burnett bill) with Mr. DOREMUS (against).

Mr. PARRAN (in favor of Burnett bill) with Mr. WEDEMAYER (against).

Mr. LAFEAN (in favor of Burnett bill) with Mr. CONRY (against).

Mr. THOMAS (in favor of Burnett bill) with Mr. BOEHNE (against).

Only on final passage of bill:

Mr. MCALL (in favor of Burnett bill) with Mr. COPLEY (against).

Mr. GUDGER (in favor of Burnett bill) with Mr. DANIEL A. DRISCOLL (against).

Mr. HARDWICK (in favor of Burnett bill) with Mr. VREELAND (against).

Mr. GUERNSEY (in favor of Burnett bill) with Mr. MCGILLICUDDY (against).

Mr. DOUGHTON (in favor of Burnett bill) with Mr. KAHN (against).

Mr. KITCHIN (in favor of Burnett bill) with Mr. LOBECK (against).

Mr. PALMER (in favor of Burnett bill) with Mr. SMITH of New York (against).

Until further notice:

Mr. AIKIN of South Carolina with Mr. FORDNEY.

Mr. HARRISON of New York with Mr. DE FOREST.

Mr. CLINE with Mr. HAUGEN.

Mr. GREGG of Texas with Mr. LAWRENCE.

Mr. RANDELL of Louisiana with Mr. SULLOWAY.

Mr. ROBINSON with Mr. GRIEST.

Mr. SISSON with Mr. MCKENZIE.

Mr. TALCOTT of New York with Mr. LAFFERTY.

Mr. MANN. Mr. Speaker, may I inquire if the gentleman from Alabama, Mr. UNDERWOOD, voted?

The SPEAKER. He is not recorded.

Mr. MANN. I am paired with that gentleman. I voted "no," and I desire to withdraw my vote, and to be recorded "present."

The result of the vote was announced as above recorded.

The SPEAKER. A quorum being present, the Doorkeeper will open the doors.

On motion of Mr. BURNETT, a motion to reconsider the last vote was laid on the table.

Mr. BURNETT. Mr. Speaker, I ask unanimous consent that all gentlemen who have spoken on this bill may have five legislative days in which to extend their remarks.

The SPEAKER. The gentleman from Alabama asks unanimous consent that all gentlemen who have spoken on this bill may have five legislative days in which to extend their remarks in the RECORD. Is there objection?

Mr. MANN. Reserving the right to object, I should like to ask the gentleman from Alabama who there is who has spoken who has not obtained leave to extend already? I think everybody who spoke has obtained leave to extend, with one exception. I should be glad to have leave extended to the gentleman from Maryland [Mr. LINTHICUM].

Mr. BURNETT. I think the gentleman from Missouri [Mr. DYER] did not get leave.

Mr. MANN. I thought he did.

Mr. BURNETT. I think there are several gentlemen who did not, and I am not sure that I did.

Mr. MANN. I think the gentleman did.

The SPEAKER. Is there objection?

Mr. MANN. I shall object to the general request. I have no objection to specific requests.

Mr. LINTHICUM. Mr. Speaker, yesterday when I asked leave to extend there was objection. I now ask for leave to extend my remarks in the RECORD.

Mr. DYER. I make the same request.

The SPEAKER. The gentleman from Maryland [Mr. LINTHICUM] and the gentleman from Missouri [Mr. DYER] ask unanimous consent to extend their remarks in the RECORD. Is there objection?

There was no objection.

Mr. BURNETT. In view of the lateness of the session I move that the House appoint a committee of conference.

Mr. MANN. I make the point of order that that motion is not in order.

Mr. BURNETT. The same course was pursued in the immigration bill when the gentleman from Indiana, Mr. Watson, was in the chair.

The SPEAKER. For what reason does the gentleman from Illinois object?

Mr. MANN. I make the point of order that the motion is not in order.

The SPEAKER. Why is it not in order?

Mr. MANN. There is no disagreement as yet between the two Houses. We have amended the Senate bill, but they have not disagreed, and until the point of disagreement is reached conferees can only be appointed by unanimous consent. It is sometimes done by unanimous consent, but conference comes from disagreement. Neither body can appoint a conference committee until there is a disagreement and an insistence upon the position which that body takes. The Senate may agree to the House amendment, but until the Senate disagrees and insists upon that it is not in order to appoint conferees.

Mr. GARDNER of Massachusetts. Mr. Speaker, the rule is perfectly clear. There is no disagreement necessary. It is an old principle of parliamentary law that conferees may be appointed and a conference asked for before disagreement. I invite the attention of the Chair to Jefferson's Manual. I am reading from paragraph 5264, volume 5, Hinds' Precedents, as follows:

A conference may be asked before the House asking it has come to a resolution of disagreement, insisting or adhering. In which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given.

This same question arose on the 25th of June, 1906. The point of order was not made against the motion of Mr. Watson, who, after being Chairman of the Committee of the Whole, moved to appoint conferees. But I, knowing that the motion was to be made at the time, had inquired in an informal way of parliamentarians in the House, and I found that there was no disagreement whatever as to the power of the House to appoint conferees before the resolution of disagreement had been arrived at. If the syllabus at the beginning of the paragraph 6254 in this precedent is read the third paragraph says distinctly:

A conference may be asked before the House has come to a resolution of disagreement.

Mr. SHERLEY. Will the gentleman yield?

Mr. GARDNER of Massachusetts. Certainly.

Mr. SHERLEY. Was that a case where the House that could disagree was asking for the conference? Is not this a case where the House has already acted?

Mr. GARDNER of Massachusetts. No; the case was absolutely parallel.

Mr. SHERLEY. What the gentleman read does not seem to indicate it.

Mr. GARDNER of Massachusetts. Certainly; they have either got to insist, adhere, or recede.

Mr. SHERLEY. That is a case where the Senate might ask for a conference, but this is a case where the House asks for a conference on a bill of the Senate that it has amended.

Mr. GARDNER of Massachusetts. I have told the gentleman that that was an exactly parallel case. The House had amended a Senate bill by substitution.

Mr. SHERLEY. I understand, and that was done by unanimous consent. I am asking the gentleman if what he reads from Jefferson's Manual—

Mr. GARDNER of Massachusetts. It is the general principle; it says "the House," which means the Chamber, as the gentleman knows from his long familiarity with Jefferson's Manual.

Mr. SHERLEY. The gentleman does not know it, and if the gentleman from Massachusetts will permit me, I think he may get my point. The reference there to the House is to the House that may agree or disagree and not to the House that has acted on a matter, as this House has.

Mr. GARDNER of Massachusetts. It is especially after action, before coming to the resolution of disagreement. There is no intermediate stage. "A conference may be asked before the House asking it has come to a resolution of disagreement to insist or adhere."

Mr. SHERLEY. This is a case where the House has come to a resolution of disagreement by amendment.

Mr. GARDNER of Massachusetts. All right. Then it is clearly a resolution of disagreement, and you can ask for a committee of conference.

Mr. SHERLEY. The point that I desire to suggest to the gentleman is this—

Mr. MADDEN. Mr. Speaker, suppose the Senate should agree—

Mr. GARDNER of Massachusetts. One gentleman at a time. I can not answer too many at once.

The SPEAKER. Will the gentleman from Massachusetts yield to the gentleman from Illinois?

Mr. GARDNER of Massachusetts. I yield to the gentleman from Kentucky.

Mr. SHERLEY. The suggestion I desire to make is that the paragraph that the gentleman read from Jefferson's Manual indicates that the House would have before it the question of whether it would recede from its position or insist, and that in that case it could ask for a conference before acting on it by receding or further insisting.

This is a case of a House having a bill from the other body and having amended it. There is nothing that this House can now do until the Senate has asked for a conference or has receded from its position and agreed to the position of the House.

Mr. MONDELL. Mr. Speaker, will the gentleman yield?

Mr. GARDNER of Massachusetts. Not until I have answered the gentleman from Kentucky. There are only two possible stages in which a House can find itself—either that it has come to a resolution of disagreement or that it has not come to a resolution of disagreement. A mere disagreement is not a resolution of disagreement. After a resolution of disagreement had been arrived at, I have never heard it disputed that it was in order to ask for a conference. I have heard it disputed this morning by the gentleman from Illinois [Mr. MANN], whether you might ask for a conference before a resolution of disagreement had been arrived at. There are three resolutions of disagreement, to wit, to insist, to adhere, or to recede. The question as to the ability of the House to ask for a committee of conference after one of those three votes has been taken is undoubted, and unquestionably, if we are to follow Jefferson's Manual, it is also in order to ask for a conference before it is arrived at.

To continue:

A conference may be asked before the House asking if it has come to a resolution of disagreement, insisting or adhering, in which case the papers are not left with the other conferees, but are brought back to be the foundation of the vote to be given. And this is the most reasonable and respectful proceeding, for, as was urged by the Lords on a particular occasion, "it is held vain and below the wisdom of Parliament to reason or argue against reasonable resolutions and upon terms of impossibility to persuade." So the Commons say, "An adherence is never delivered at a free conference, which implies debate." And on another occasion the Lords made it an objection that the Commons had asked a free conference after they had made resolutions of adhering. It was then affirmed, however, on the part of the Commons that nothing was more parliamentary than to proceed with free conferences after adhering, etc.

Mr. SHERLEY. Mr. Speaker, I suggest to the gentleman that there is not presented to this House the question of whether the House shall recede or shall insist upon the disagreement. That question is presented to the Senate, and there the proposition that the gentleman is here presenting would

be, under the authority he cites, in order; but it is not a condition that confronts this House at all.

Mr. GARDNER of Massachusetts. The gentleman is familiar with the reference to 3 Hatsell.

Mr. SHERLEY. I do not know that I know that particular reference, but I am familiar with what the gentleman has just read.

Mr. GARDNER of Massachusetts. Has the gentleman ever known of an occasion where the right of the House to appoint conferees before arriving at a resolution of disagreement has before been questioned?

Mr. SHERLEY. I do not recall any instance except the one that the gentleman recites. The absence of precedents would indicate that it was never before thought of.

Mr. GARDNER of Massachusetts. Until the gentleman from Illinois suggested it, I thought it was an indisputable right.

Mr. MONDELL. Mr. Speaker, will the gentleman now yield?

Mr. GARDNER of Massachusetts. Certainly.

Mr. MONDELL. Mr. Speaker, I voted with the gentleman from Massachusetts, and I hope to see this measure enacted into law, but aside from the question of the regularity of procedure now proposed, is not the gentleman prejudicing his measure by what he proposes? I do not know anything as to the state of mind at the other end of the Capitol—

Mr. GARDNER of Massachusetts. It seems to me that the gentleman is discussing the merits of the motion and not the point of order. I am willing to discuss the point of order with the gentleman.

Mr. MONDELL. Will the gentleman allow me to make a very brief statement? It is altogether possible that the measure passed by the House might be acceptable at the other end of the Capitol. The motion proposed by the gentleman precludes the possibility of an agreement and postpones in any event the final enactment of the legislation.

Mr. GARDNER of Massachusetts. Has the gentleman finished?

Mr. MONDELL. Yes.

Mr. GARDNER of Massachusetts. I now yield to the gentleman from Illinois [Mr. MADDEN].

Mr. MADDEN. Mr. Speaker, I was simply going to ask if it was not possible that the Senate might accept the action of the House and in that case there would not be anything for a conference. In view of that possibility of the Senate accepting the action of the House, would it not be unwise to ask for a conference in advance of our knowledge of what the Senate will do?

Mr. GARDNER of Massachusetts. The wisdom of the action is a question to be decided after the point of order is settled.

The SPEAKER. The Chair is ready to rule.

Mr. MANN. Mr. Speaker, I was waiting until I might say a word without offending the sensibilities of the gentleman from Massachusetts [Mr. GARDNER].

The SPEAKER. The Chair will hear the gentleman from Illinois.

Mr. MANN. Mr. Speaker, I was waiting until the gentleman from Massachusetts had yielded the floor. He seems to dislike to have anyone interrupt him, and hence I did not interrupt him. The first object of a conference is that there should be a disagreement between the two bodies. It is true, as stated in Jefferson's Manual in one place, "A conference has been asked after the first reading of a bill. This is a singular instance." That is the language of Mr. Jefferson, not mine. Then preceding that is a footnote by the parliamentary clerk, "Obsolete provision as to a conference on first reading." What is a conference on matters pertaining to legislation on bills and amendments? It is to compose differences between the two bodies. The House may ask for a conference with the Senate on an immigration subject if it pleases. It is wholly within the power of the House to ask for a conference with the Senate on the subject of whether the President should be removed or whether his term should be extended or shortened, or a constitutional amendment, but the purpose of this conference is to compose differences relating to the amendments to the bill. There are no differences between the House and the Senate. The House has passed an amendment and until the Senate disagrees to that amendment there is no disagreement between the two bodies.

The SPEAKER. The Chair will not bother the gentleman from Illinois for further argument. The proper function of a conference committee is to settle differences between the two Houses, and there are no differences between the two Houses as far as has been developed. For all the House knows or all the Chair knows the Senate will accept this amendment, and therefore the point of order is sustained. A motion to insist would have been in order, and the Chair will not say that in an emer-

gency as to time or any other thing of the sort he would not hold the pending motion out of order, but no emergency exists, and this bill should take the usual course.

TOLLS ON PANAMA CANAL.

Mr. GOLDFOGLE. Mr. Speaker, I ask unanimous consent to have printed in the Record an interview published in the New York Herald of Sunday, December 15 of this year, with the Hon. STEVEN B. AYRES, one of my colleagues from New York, on the subject of tolls on the Panama Canal.

The SPEAKER. The gentleman from New York asks to have printed in the CONGRESSIONAL RECORD an editorial from the New York Herald of a certain date containing an interview with his colleague Mr. AYRES. Is there objection? [After a pause.] The Chair hears none.

The interview is as follows:

Great Britain's protest against the decision of Congress to give American vessels in the coastwise trade free passage through the Panama Canal has found strong support in the press of the United States. Many of the great newspapers are urging that the action of Congress be rescinded or that the question be sent to The Hague for arbitration. The reason given is that the word of the United States has been pledged by the Hay-Pauncefote treaty and that if we now do not live up scrupulously to the terms of that treaty we shall stand before the world a faithless Nation.

It is easy to sympathize with a sentiment so admirable, because every citizen desires to uphold the honor of his country. But in the present instance this sentiment is beside the mark; it is not properly called forth, since the honor of our Government is not involved.

Congress has in its action on this question followed a precedent long ago, established, well known to Great Britain, and acquiesced in by her Government for 95 years. The protest now lodged is specious and undoubtedly made in the same spirit which has animated Great Britain in all the marine treaties and conventions she has hitherto negotiated with us. And it is to be observed that the grounds upon which this formal protest are made are different from those stated last summer, when the tentative protest was filed. Then it was stated that a repayment by the United States of the tolls charged to American vessels would be violative of the spirit of the treaty. But since then Great Britain has perceived that the temper of the American people is adverse to the repayment of tolls or the payment of any subsidy whatever to our merchant vessels, and that the contention has therefore been abandoned as academic.

OPPOSES AMERICAN MERCHANT MARINE.

In considering this subject it must be remembered that Great Britain has always been hostile to any effort of ours to establish an American merchant marine and share with her the carrying trade of the world. After the formation of our Constitution the earliest measures adopted at the first session of Congress in 1789 were those granting differentials in duties and tonnage dues to American ships.

These differentials, and the fact that Great Britain was constantly involved in marine warfare with other European nations, so built up our merchant marine that by 1810 our ships not only carried 90 per cent of our own commerce but also a large percentage of the indirect trade of the world. And it was to drive our ships out of this indirect trade, where we were keen competitors, that the War of 1812 was forced upon us. That war was disastrous to us and absolutely successful to her, because it almost entirely destroyed our indirect carrying trade and we were compelled to negotiate and assent to the reciprocity treaty of 1815. This treaty declared, among other matters:

"There shall be between the territories of the United States of America and all the territories of His Britannic Majesty in Europe a reciprocal liberty of commerce."

"No higher or other duties or charges shall be imposed in any of the ports of the United States on British vessels than those payable in the same ports by vessels of the United States nor in the ports of any of His Britannic Majesty's territories in Europe on the vessels of the United States than shall be payable in the same ports on British vessels."

SAVING COASTWISE TRADE.

Now, this is absolutely the same spirit breathed in the Hay-Pauncefote treaty—equality of tolls and charges, the same to one country as to the other. Yet what followed? Our foreign commerce was prostrated at the termination of the war. Many of the vessels remaining lay rotting at the wharves of Boston and New York and Philadelphia. Therefore, in 1817, Congress enacted a law which absolutely prohibited British vessels from engaging in our coastwise trade—the trade from one American port to another. This law reads:

"No merchandise shall be imported, under penalty of forfeiture thereof, from one port of the United States to another port of the United States in a vessel belonging wholly or in part to a subject of any foreign power."

This law was entirely subversive of that portion of the treaty of 1815 which stated that "no higher or other duties" shall be charged on British ships than on those of the United States. It established for the first time, and perhaps for all time, our own coastwise trade. Yet the law stood, and it has been acquiesced in by Great Britain since that time.

Congress has now adopted the same policy precisely with regard to the Hay-Pauncefote treaty. As I view the matter, by the paragraph in the Panama Canal act granting free tolls to our coastwise marine Congress abrogated such part of that treaty as conflicted with the Panama Canal act, just as the law of 1817 abrogated that part of the reciprocity treaty of 1815 with which it was in conflict.

STATUS OF A COMMERCIAL TREATY.

Now, those persons who believe that this conduct involves the honor of the Nation—and their motives are of the highest—do so from a misconception of what a commercial treaty really is. A commercial treaty is not a document like a promissory note, in which a promise is made for a consideration to do or perform certain acts. A commercial treaty is merely a statement, agreed to and signed by the agents of the contracting parties, of the terms upon which the contracting parties find it most desirable and most comfortable and most advantageous to have relations with each other. When either of the contracting parties finds that it is undesirable to continue such relations, it is its right to give notice of such fact and terminate such relations.

And by inserting the free-toll provision in the Panama Canal act Congress merely gave notice, at least two years before it became effective, of its intention to abrogate that portion of the Hay-Pauncefote treaty. And the remission of tolls was not considered as a gift or subsidy to our domestic merchant marine, because it is well understood that competition between lines now in existence and those which will come into existence will lower the marine freight rates by precisely the amount of the remitted tolls.

What Congress then believed was that the lower the marine rates could be kept between the two coasts the better chance shippers would have of emancipation from transcontinental railroads and that farther inland would be moved the zone of competition between rail and marine rates. In other words, Congress believed that the remission of tolls was not to be so direct a benefit to the coastwise marine as to the merchants and consumers who pay the freights. The reason Great Britain protests against the remission of tolls is because her economists know, better than the great bulk of our people yet know, what an effect the Panama Canal is to have on our commerce with South America. That commerce is now largely carried by British ships, and her statesmen fear, and well may fear, the effect upon her indirect carrying trade of the opening of the Panama Canal with free tolls to vessels of the United States. Even the prospect of this condition has given an impetus to American shipbuilding that it has never had since steel vessels were built.

The interesting, the suggestive fact is that for the first time since the era of iron steamships began American capital has now just begun to take an interest in marine investments. In the last year, for the first time in our history, steam cargo vessels built in American shipyards, officered by American citizens, flying the American flag, have been chartered to carry American products to European ports. Great Britain has bested us in the past, with commercial treaties cleverly drawn, because the eyes of her plenipotentiaries have been fixed upon marine advantages, while our attention has been monopolized by the undeveloped resources of our land. But this will not be true much longer. We are just beginning anew to struggle with Great Britain and with Germany for the commerce and the carrying trade of the world. And no paper conventions, made without valid consideration and at a time when our envoys did not realize our needs, must be allowed to hamper the destiny of the great Republic.

INDIAN APPROPRIATION BILL.

Mr. STEPHENS of Texas. Mr. Speaker, I desire to call up the bill H. R. 26874, and move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 26874, the Indian appropriation bill, with Mr. SAUNDERS in the chair.

Mr. STEPHENS of Texas. Mr. Chairman, we arrived at the end of line 20, page 4, and I ask for the reading of the bill.

The Clerk read as follows:

For construction, lease, purchase, repairs, and improvements of school and agency buildings, and for sewerage, water supply, and lighting plants, \$300,000.

Mr. RAKER. Mr. Chairman, I move to strike out the last word. Mr. Chairman, I notice in the bill which was passed last year there was an appropriation of \$480,000 for this same purpose. This year it is \$300,000. Would the chairman of the committee permit a question upon the matter?

Mr. STEPHENS of Texas. Certainly.

Mr. RAKER. I desire to ask why the reduction in the appropriation?

Mr. STEPHENS of Texas. The gentleman will notice that of the appropriation for the fiscal year 1912 \$130,000 remained unexpended. There is quite an unexpended balance, and, again, there are numerous items carrying appropriations for new buildings, and we have not put in any new buildings at all. Those two reasons show the reason why we have not granted the full amount.

Mr. RAKER. From the report of the committee and bill one would not be advised as to what buildings these are that are under construction or intended to be constructed under the appropriation for last year.

Mr. STEPHENS of Texas. I will state to the gentleman that each one of the superintendents having charge of these agencies and schools has made recommendation for new buildings and the enlargement of buildings, and so forth, requiring new construction, but we did not feel that it was the best thing to do at the present time.

Mr. RAKER. Do I understand from the committee that it is the intention of the committee at this time to oppose all new improvements about and around the schools?

Mr. STEPHENS of Texas. We have not appropriated for a single new building or for the enlargement of plants now.

Mr. RAKER. I ask the chairman's attention to this. For instance, where it is really and absolutely for the life and condition of the school, as for the construction of a septic tank, the building of dormitories for the boys, and so forth, as, for instance in a school there is one large building, the girls in one end and the boys at the other, and they have to go up the same stairs in the same building.

Now, the superintendent of this particular school is very desirous, for the proper handling and conduct of the school, that

there be built for this particular location a dormitory for the boys.

Mr. STEPHENS of Texas. Is not that school separately appropriated for?

Mr. RAKER. No; it is not.

Mr. STEPHENS of Texas. Then it can be paid out of the lump-sum appropriation?

Mr. RAKER. The trouble with it is that they do not pay it out unless we especially provide for it.

Mr. STEPHENS of Texas. Your trouble is with the Commissioner of Indian Affairs.

Mr. RAKER. These appropriations are all parceled out to the schools generally.

Mr. STEPHENS of Texas. Let me state to the gentleman that the department, under "new construction," used last year \$155,722 for repairs, \$105,671 for rents, and elsewhere \$35,560, and they failed to take the appropriation of \$130,000, which is remaining unexpended. Why do they want more money when they did not expend last year the money that was given them?

Mr. RAKER. Suppose that in a particular case, now, there is no appropriation by the Indian Bureau—the Department of Indian Affairs—for the various schools; or, suppose it has been made, it is so insufficient that these improvements can not be made. If the department recommends such new improvement and it is necessary for the proper conduct of the school, I apprehend that the committee would not seriously oppose such legislation, would they?

Mr. STEPHENS of Texas. We have given them more money than they used last year by \$130,000, and if they had seen proper to do so they could have built the stairways and additional improvements, as you suggest. We have furnished them the money. As you state, your schools are under the general appropriation act, and they have appropriated a lump sum for that purpose. Therefore you ought to get this out of the lump-sum appropriation.

Mr. MONDELL. Mr. Chairman, I move to strike out the last word.

I called attention the other day when this bill was under consideration to the fact that there were no printed hearings. Since that time I have been furnished with a copy of what purports to be hearings before the committee. In regard to this particular item, I find there were no hearings, but that the Commissioner of Indian Affairs furnished the committee with a statement in justification of the increase of \$120,000 asked, and the committee's reply to that was a reduction of \$180,000. The commissioner sets forth in detail the expenditures that he desires to make under this head, and the committee does not seem to have interrogated the commissioner or anyone else as to the necessity for those buildings and improvements, or any portion of them, but have reduced the item from \$480,000 last year to \$300,000 this year, although the commissioner had asked me for an increase of \$600,000.

Mr. STEPHENS of Texas. If the gentleman will examine the statement from the commissioner, on page 26, next to the last paragraph, he will find this language:

It will be noted that of the appropriation for the fiscal year 1912, \$130,000 remains unexpended.

Now, if they had that much money left that had not been expended last year, why should we increase it this year?

Mr. MONDELL. He refers to unforeseen and unfortunate conditions or circumstances which prevented him from spending the money for construction and betterments for which it was appropriated. But the money he is asking for now is for other and further construction and improvement.

Mr. STEPHENS of Texas. Will the gentleman permit me to state that at the top of this same page—page 26—we find for new construction, \$155,742.45? We did not give them that because we thought it was not necessary. We thought the schools as they now exist, with the great amount for repairs and improvements on the school buildings, was sufficient.

Mr. MONDELL. Did the committee interrogate the commissioner at all in regard to the necessity in any of these cases?

Mr. STEPHENS of Texas. We had him before us and went over the various items, and the subcommittee had a few hearings with him.

Mr. MONDELL. I can not find out. Perhaps the chairman of the committee can point out the place in the hearings where the commissioner was interrogated in regard to these items.

Mr. STEPHENS of Texas. I am not certain that we had a stenographer present at the time the commissioner was interrogated about this item, but we notified him that it was not the intention of the committee to construct any new buildings outside of Indian reservations. I think that policy is the correct one, and that all the money expended for school purposes should be expended on buildings erected on Indian reservations. I am

opposed to spending more money in building schools outside the reservations and to removing the Indians from the reservations to the outside boarding schools. I think the money can be much better expended on the reservations than off the reservations.

Mr. MONDELL. Do I understand that it is the chairman's understanding that this money is to be used for construction off of reservations? My understanding was exactly the contrary. I would like to be set right in the matter if I am wrong.

Mr. STEPHENS of Texas. As I stated, we have not put any new buildings in this bill at all. It was our policy to leave that out this year.

Mr. MONDELL. But I understood the chairman of the Committee on Indian Affairs to say that the committee had provided for no new construction off of reservations.

Mr. STEPHENS of Texas. Only lump-sum appropriations.

Mr. MONDELL. But this item is for improvements on reservations, is it not?

Mr. STEPHENS of Texas. This appropriation is on the reservations.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAKER. Mr. Chairman, I move to strike out, at the end of line 23, page 4, the words "three hundred thousand dollars" and substitute therefor the words "three hundred and sixty thousand dollars."

Now, Mr. Chairman and gentlemen, upon that matter I want to follow that amendment with other amendments, and I want to call the matter to the attention of the committee. This is not a personal matter with me, but it is a matter of the proper government and proper improvement of these schools. The first one is the school at Greenville, in Plumas County, some 200 miles south of where I live. I am familiar with the location. It is located at the side of a valley, in the foothills, and is a small piece of land of 6 or 7 acres, without a spear of grass on it, but with some oak trees and a considerable number of large pine trees on it. There is plenty of land right adjacent in the valley where we could get 20 or 30 acres for the purpose of demonstrating and teaching them how to become farmers, and get some use out of the school. This is in the heart of the Indian country. The Indians are living all about there, within 5 or 10 or 15 or 20 miles, on their allotments. If we obtain a sufficient tract of land to allow them to have a dairy and an orchard and raise grain and vegetables we will do them some good.

Mr. STEPHENS of Texas. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman yield?

Mr. RAKER. Yes.

Mr. STEPHENS of Texas. On page 10 of the bill, section 3, under the head of "California," the gentleman will find this item:

Sec. 3. For support and civilization of Indians in California, including pay of employees, and for the purchase of small tracts of land situated adjacent to lands heretofore purchased, and for improvements on lands for the use and occupancy of Indians in California, \$57,000.

Mr. RAKER. Yes.

Mr. STEPHENS of Texas. There is a special fund for the gentleman's State, and it covers the exact reasons that the gentleman gives for the acquisition of this additional land.

Mr. RAKER. The general idea is all right, but the superintendent wants that for other purposes, and ours would be excluded entirely.

Now, I believe that the committee and the House do not want to appropriate money unnecessarily. The object is to benefit those who attend the schools. In the first place there is no water supply, and in the next place there is no laundry here, with one hundred and some odd pupils, and there is no place to teach the boys to be efficient in blacksmithing and in learning to repair their wagons and doing some work out on the farm. If you are going to have your school—and it is there—why not have a blacksmith shop in connection with the school, as they have at other places? While there is \$57,000 appropriated generally in the main bill, it does not provide for it for these other schools. I shall ask \$26,800 for this particular school at Greenville, first for the construction of a septic tank and sewerage system, \$3,000; for an employees' building, to be used for employees' quarters, club, kitchen, and dining room, \$4,000; for shop building for instructing boys in blacksmithing and carpentry, \$1,200.

Right in that connection, can there be anything better done than to give these young Indian boys practical lessons in carpentry, so that when they go on their allotments, which they all have, or when they go to their homes, they may be competent to build upon their allotments and may become blacksmiths, with sufficient knowledge to repair wagons and tools as white men do.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAKER. I shall not take up much more of the time of the committee, but I should like to have unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. STEPHENS of Texas. I should like to ask the gentleman a question in that connection.

Mr. RAKER. I submit for a question.

Mr. STEPHENS of Texas. Is it not a fact that these schools which the gentleman mentions are not specially provided for?

Mr. RAKER. They are not specially provided for.

Mr. STEPHENS of Texas. Then they come under the general lump-sum appropriation. Is the gentleman aware that this language is carried in the bill, beginning in line 10, page 4:

For support of Indian day and industrial schools not otherwise provided for.

That covers your schools, as I understand from your statement.

Mr. RAKER. Yes.

Mr. STEPHENS of Texas. It provides:

And for other educational and industrial purposes in connection therewith, \$1,420,000.

Now, is not that sufficient to cover the case you mention?

Mr. RAKER. In answer to the question of the chairman, I will say that I have been to see the superintendent and the Indian Commissioner, and I am informed by the commissioner, "We have these amounts specified and carried in this bill, and this school is entirely eliminated from any amount for new buildings. We can only make the necessary repairs, and if you desire to have your schools improved, you must get an additional amount included in the bill."

Mr. BURKE of South Dakota. Will the gentleman yield?

Mr. RAKER. I yield to the gentleman from South Dakota.

Mr. BURKE of South Dakota. Is the gentleman aware of the fact that in the last fiscal year ending June 30, 1912, about \$1,700 was expended at this school in the construction of new buildings?

Mr. RAKER. Not this school, but the one 200 miles north.

Mr. BURKE of South Dakota. I am asking about Greenville.

Mr. RAKER. I did not quite understand the gentleman's question.

Mr. BURKE of South Dakota. The Greenville school had an average attendance of 90 pupils. Is that correct?

Mr. RAKER. About that number; yes.

Mr. BURKE of South Dakota. And there was expended for new buildings—in the construction of new buildings—\$1,673, and a little less than \$700 for repairing.

Mr. RAKER. I think that is right.

Mr. BURKE of South Dakota. So we are doing something in connection with the building up of the school; and in one school in the gentleman's State last year there were new buildings constructed from this general appropriation amounting to \$6,000 or \$7,000.

Mr. RAKER. That was a long distance off, where it was needed. In this school the floors are worn out. When I was there in October they were putting down a new floor where the floor was worn out entirely. They put up a small new building for the superintendent's private office. Now, continuing—

For school farm: For maintaining the school stock and small dairy herd and for raising fruits, grains, and vegetables, \$7,000; for a school and assembly building for general meetings and entertainments, \$8,000—

There is no place now where you can assemble these pupils all together—

for a complete steam-heating plant for school and accessory buildings, \$6,000; for a boys' dormitory with a capacity of 75, \$5,000—

There is nothing of that kind there now. You have got these young men and women there. In the first place, you ought to keep them thoroughly clean. You ought to teach them to do these things—to keep their clothes in proper shape—

for a steam laundry, with a capacity of washing and ironing for 150 persons, \$2,600.

Mr. MONDELL. Will the gentleman yield?

Mr. RAKER. Certainly.

Mr. MONDELL. I notice the last item was a steam laundry. I have followed the gentleman with interest, and generally with full accord in his views; but when he proposes a steam laundry at a place where he is trying to teach Indian girls how to carry on and perform the duties of the household, it seems to me that he is not in harmony with the views he has generally expressed. Does not the gentleman think it would be very much better to invest the money in washtubs and washboards

and teach the girls how to wash? Can they have a steam laundry in each tepee when they get back to the reservation? What advantage to them is it to see a steam laundry in operation?

Mr. RAKER. I will answer the gentleman's question. The gentleman's argument is fallacious. He evidently has not been in an Indian school where they have a steam laundry.

Mr. MONDELL. Oh, yes; I have.

Mr. RAKER. He does not realize that they have the wash-tubs also; he does not realize that it teaches them how to do general laundry work.

The CHAIRMAN. The time of the gentleman from California has expired.

Mr. MONDELL. Mr. Chairman, I rise to support the amendment. I am in favor of this increase, but I hope it will not all be used at one school in California, and particularly not for the construction of a laundry. Now, I do not mean to say that steam laundries are not necessary about Indian schools, but I have more than once on the floor of the House, and several times when about Indian schools, called attention to the fact that we do better, if instead of paying quite so much attention to elaborate up-to-date machinery for carrying on the work, teach these Indians, boys and girls, to do the things they must do when they go back to the farms.

We are educating them with a view of their being able to support themselves on their lands. We ought to educate them on the reservation, and we ought to keep them, so far as we can, with their families while we are educating them, so that the daily contact will not only improve the mind and the character of the pupil, but improve and elevate the people at home. We ought to teach the young girls how to use the wash-tub and the washboard; the boys to farm, mend harness, do iron and wood work.

Mr. RAKER. Will the gentleman yield?

Mr. MONDELL. I have only five minutes, and there are other points that I want to discuss. I think the chairman did not intend to say a moment ago that this appropriation was for schools not on Indian reservations. If I am rightly informed, it is for schools on Indian reservations. These are reservation schools, and nonreservation schools are provided for in a separate item. There are, however, reservation schools that are also provided for in separate items. Among such schools there is one in my State. The committee in its wisdom did not grant what the commissioner asked for—a new dairy barn at that school. The present dairy barn is about to fall down; it is propped up. I saw it a few months ago, and it was in a sadly dilapidated condition.

Mr. STEPHENS of Texas. It is a nonreservation school, is it?

Mr. MONDELL. It is one of the reservation schools carried in a separate item.

Mr. STEPHENS of Texas. Separately appropriated for?

Mr. MONDELL. Yes; and we can get nothing out of this appropriation for that barn, and the committee did not see fit to provide for the appropriation in a separate item. We shall get no benefit for that dairy barn, even though the amendment of the gentleman shall prevail. When we reach the other item, I hope the committee will give me an opportunity to call their attention to the fact that it is a needed structure, serving an exceedingly useful purpose—that of housing the dairy stock on the reservation—and that it needs rebuilding. They have a fine herd of cows, they are producing butter and, I think, cheese, and doing many useful things. As that barn can not be built from this appropriation, I hope the committee, when they reach the other, will provide for it.

Mr. STEPHENS of Texas. We have already allowed you \$4,000.

Mr. MONDELL. That is for general repairs on a great reservation. The chairman is sufficiently familiar with these matters to know that that amount is necessary for general and ordinary repairs, but what is wanted is a special item of \$4,000 for this barn.

Mr. BURKE of South Dakota. Will the gentleman yield?

Mr. MONDELL. Yes.

Mr. BURKE of South Dakota. I would like to ask the gentleman if there are other buildings on the reservation besides school buildings, agency buildings, and so forth?

Mr. MONDELL. Yes.

Mr. BURKE of South Dakota. They may be repaired and new buildings constructed out of the appropriation. The appropriation for the school can only be used at that particular school.

Mr. MONDELL. The gentleman understands that the Indian Office holds that they can not use any of the general appropriation for such construction as I have referred to.

Mr. BURKE of South Dakota. They can not use any of the general appropriations for any schools that are specifically appropriated for.

Mr. MONDELL. This barn is in connection with the school. The CHAIRMAN. The time of the gentleman from Wyoming has expired.

Mr. STEPHENS of Texas. Mr. Chairman, I hope that this amendment will be voted down.

Mr. CANNON. Mr. Chairman, I move to strike out the last word. I pick up the report, and I find the following:

This bill carries appropriations payable from the Federal Treasury as follows: For gratuity appropriations, \$6,052,393.28; for fulfilling treaty stipulations, \$740,560; for reimbursable items, \$850,000; and further appropriations aggregating \$489,075.07 payable from Indian trust funds now on deposit in the United States Treasury.

The reimbursable item is smaller, I think, than is common—smaller than it used to be. Reimbursements formerly did not materialize to any great extent. I think that most of the Indians now have citizenship, have they not?

Mr. STEPHENS of Texas. A great many of them have.

Mr. CANNON. And their last estate is worse than their first, as a general rule. The best Indians, the richest Indians from a material standpoint, and perhaps from every other standpoint, are in Oklahoma, and I recollect a few days ago hearing what was not encouraging in reports from that State, so far as the Indian is concerned. I was led to believe that the time is not far distant when great blocks of these people will be absolutely without property, a charge upon the Federal Treasury, or a charge upon the State of Oklahoma. I know there are exceptions. The Indians, of course, are human beings. Away back in 1885 I was upon a committee to make investigations of the Indian Service. We made a very thorough investigation. Judge Holman was the chairman of that committee. Great amounts of money were being expended to educate the Indian. He received an education that he did not utilize after he had received it. Of course there was an exception here and there. I speak from a general standpoint. We found that when the Indian went out of the public schools it seemed to be a matter of pride to have him become an ordinary Indian, and the educated schoolgirl to go back to her former state or to the estate of her mother and grandmother. We must walk before we can run.

I wish every Indian school in this country were abolished. I refer to the kind of schools that are covered by the amendment. I would have education such as would pay and would be practical. It will take generations for the Indians to grow as it took generations for our forebears to grow. It is not very encouraging—

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

Mr. CANNON. Yes.

Mr. FERRIS. Mr. Chairman, I gather from what the gentleman says that he feels that some line of industrial pursuits would bring about more civilization and advancement among the Indians than would be this intense education.

Mr. CANNON. Precisely.

Mr. FERRIS. In that I am in full accord with the gentleman. Does not the gentleman think that a way could be devised among the incompetent Indians where their annuities and appropriations might be withheld from them, payable to them according to the amount of industry they manifested on their own allotments? Of course this could only reach the able-bodied ones, and perhaps only be administered among the incompetent ones.

Mr. CANNON. I wish some such plan could be worked out. Some years ago I was more familiar with these appropriations than I am now, given under treaties and as gratuities, such as were given to that great Sioux people in South Dakota and to kindred tribes. They were receiving treatment and relief without labor, and were being treated in such a way as would have made paupers of a similar number of white people, even with all our great civilization.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. RAKER. Mr. Chairman, I ask unanimous consent that the gentleman's time be extended five minutes.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. RAKER. Mr. Chairman, will the gentleman yield?

Mr. CANNON. Certainly.

Mr. RAKER. Mr. Chairman, I agree with what the gentleman has said after personal observation of 25 or 30 years. Does not the gentleman believe that wherever we can put an industrial school for these boys and girls that that would be the best education we could give them?

Mr. CANNON. No; I do not think so; especially if you are going to bunch them together and have your steam laundries

and your higher mathematics at the same place, together with a great many other things that they will never utilize. The truth is that, like the white man, on the average they do not prosper except where under the necessity of ordinary employment pretty soon after they leave the cradle the child should begin to learn that by industry they live.

I would rather have the chances of an American boy, to say nothing of Indians, who under the hand of necessity sells newspapers upon the streets or blacks boots, I would rather have his chances than those of a boy who never earned a dollar and goes to the higher schools with his automobile [applause] and all that kind of thing.

Mr. STEPHENS of Texas. Will the gentleman yield?

Mr. CANNON. And I will make this remark, and I do not believe it can be successfully contradicted, if you go to every man in this House and every man in the Senate and every man in considerable public life in the United States and in our respective States and ask him, "Where did you have your genesis?" On the farm or in the factory a genesis that involves labor and saving so that he could walk alone and develop to a good manhood. Now, I think that the treatment that the Indians have is to continue. I suspect it is to continue to pauperize them. What would I do? I do not know. I think I would have the education about where the Indian parents live and educate the parents while I was educating the boy, and I would give him subsistence according to his effort of muscle and brain.

Mr. RAKER. Will the gentleman yield?

Mr. CANNON. I do.

Mr. RAKER. Now, the schools I speak of, the ones that are involved here, are right in the center of the territory where these boys' and girls' parents live. Most of the parents and most of the boys and girls, no matter how young they are, have allotments of public lands. Now, is not it better to put them in the position that when they get old enough that they may go out and use these allotments just like you give your boy and girl some opportunity to make a good livelihood? I agree with the gentleman as to the best start in helping the Indians to-day on these reservations in competition with the white men, but he has not the opportunity no matter if he does make good.

Mr. CANNON. Oh, I tell you if a man lives on 40 acres or 20 acres and holds it, whether it is allotted to him or given to him, or whether he earned the money and bought it, he and his wife and his children are better off if they are living upon that 40 acres, and if it is necessary to train them or to give them additional knowledge that they may apply it and earn their living in the sweat of their faces do so, and if they establish that character and become competent and become thus trained they will grow and continue to grow as they have matured. May I just cite one instance. In Douglas County, Ill., way back 54 years ago there were several large tracts of land where the title was obtained frequently by men who could not read and write, a section, two sections, three sections—by military land warrants—all black lands costing about 70 cents an acre and worth now from \$200 to \$250 an acre.

There was one man, whom I will call Jones—I will not give his true name—who could not read and write. He was a great cattleman who had three sections of land. He knew how to farm. There was another man, his brother-in-law, named Smith, I will call him—that was not his name—who had about an equivalent amount of land. Their families grew up. Jones taught his boys how to handle stock; the other man tried to do so. Finally Jones came up into my office one day and I said, "How is it down in your township; how are you getting along?" He replied, "Oh, pretty well." "Well, how is Smith getting along? He has a large family and you have a large family." "Oh, first rate," says he. "But he is going to send three girls and two boys over to Asbury University." "Well," I said, "that is all right; he has worked hard and has got the money to send them." "Yes," he said, "it is all right, but they have got the notion that they do not care about farming, and he will send them over there and when they come out of Asbury College—that was over at Greencastle, Ind.—this man was a very profane man—they will just come back damn educated idjits"; and they did. [Laughter and applause.] And the property of that family was all divided and squandered. Now, those were white folks, and how could we expect the Indians to do better than white folks? If a man gets a common-school education and learns how to make a living he will prosper and be a good citizen. If he desires to follow a specialty and requires more education by utilizing the schools, nothing can stop him. If he does not utilize the higher training, the time is wasted in attaining it.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. STEPHENS of Texas. Mr. Chairman, I hope that the amendment of the gentleman from California [Mr. RAKER] will not prevail.

The CHAIRMAN. The Clerk will report the amendment. The Clerk read as follows:

Line 4, page 23, strike out the figures "300,000" and insert in lieu thereof "360,000."

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from California.

The question was taken, and the Chair announced that the yeas seemed to have it.

Mr. MANN. Mr. Chairman, I ask for a division.

The committee divided; and there were—ayes 3, yeas 22.

So the amendment was rejected.

Mr. MANN. Mr. Chairman, there are only five more Members present than there are on the Committee on Indian Affairs, and I make the point of no quorum.

Mr. STEPHENS of Texas. I hope the gentleman will withdraw that motion.

The CHAIRMAN. There is evidently not a quorum present. The Clerk will call the roll.

The roll was called, and the following-named Members failed to answer to their names:

Adair	Esch	Kopp	Ransdell, La.
Adamson	Estopinal	Korbly	Reyburn
Aiken, S. C.	Evans	Lafean	Richardson
Akin, N. Y.	Fairchild	Lafferty	Riordan
Andrus	Flood, Va.	Langham	Roberts, Mass.
Anthony	Floyd, Ark.	Lawrence	Roberts, Nev.
Barnhart	Forney	Legare	Robinson
Bartholdt	Fornes	Levy	Rodenberg
Bartlett	Foss	Lewis	Rucker, Colo.
Bates	Garner	Lindsay	Sabath
Bell, Ga.	Gill	Littleton	Scott
Berger	Godwin, N. C.	Lloyd	Sells
Blackmon	Goldfogle	Loud	Shackelford
Boehne	Gould	McCall	Sherley
Bradley	Gray	McCreary	Sherwood
Brantley	Green, Iowa	McDermott	Simmons
Broussard	Greene, Mass.	McGillicuddy	Sisson
Brown	Greene, Vt.	McHenry	Slemp
Burgess	Gregg, Pa.	McKellar	Smith, Cal.
Burke, Pa.	Gregg, Tex.	McKenzie	Smith, N. Y.
Burnett	Griest	McKinley	Sparkman
Calder	Gudger	McLaughlin	Speer
Cary	Guernsey	McMorran	Stack
Claypool	Hamill	Maher	Stanley
Clayton	Hamilton, W. Va.	Martin, Colo.	Sterling
Conry	Hanna	Matthews	Sulloway
Cooper	Hardwick	Mays	Sulzer
Copley	Harris	Merritt	Switzer
Covington	Harrison, N. Y.	Moon, Pa.	Taylor, Ala.
Cox, Ind.	Hart	Moon, Tenn.	Taylor, Colo.
Cox, Ohio	Hartman	Moore, Pa.	Taylor, Ohio
Cravens	Hay	Moore, Tex.	Thayer
Currier	Heald	Moss	Thistlewood
Curry	Higgins	Murdock	Thomas
Danforth	Hill	Murray	Towner
Daugherty	Hobson	Needham	Tribble
Davenport	Howard	Norris	Turnbull
Davidson	Howell	Olmsted	Tuttle
Davis, W. Va.	Howland	O'Shaunessy	Underwood
De Forest	Hughes, Ga.	Palmer	Vare
Dent	Hughes, W. Va.	Parran	Vreeland
Denver	Humphrey, Wash.	Patten, N. Y.	Webb
Dickson, Miss.	Humphreys, Miss.	Patton, Pa.	Wedemeyer
Dies	Jackson	Pepper	Weeks
Diffenderfer	James	Peters	Whitacre
Dixon, Ind.	Jones	Pickett	White
Dodds	Kahn	Plumley	Wilder
Doremus	Kennedy	Porter	Wilson, Ill.
Doughton	Kindred	Pou	Wilson, N. Y.
Draper	Kinkaid, Nebr.	Prouty	Witherspoon
Driscoll, D. A.	Kitchin	Pujo	Wood, N. J.
Dupré	Knowland	Rainey	Woods, Iowa
Ellerbe	Konig	Randell, Tex.	Young, Mich.

Thereupon the committee rose; and Mr. FITZGERALD, as Speaker pro tempore, having assumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee having had under consideration the bill H. R. 26874, the Indian appropriation bill, and finding itself without a quorum, he had caused the roll to be called, and he therewith reported a list of absentees.

The SPEAKER pro tempore. The Chairman of the Committee of the Whole House on the state of the Union reports that 179 gentlemen have answered to their names, a quorum of the committee, and the Chairman reports the names of the absentees to be entered on the Journal in accordance with the rule.

Mr. MANN. Would it not be in order to report the names? They have not been reported.

The SPEAKER pro tempore. The Chairman reported the list of names. The uniform practice of the House is for the Chairman to report the names in a list, and that has been done.

Mr. MANN. The rule provides that the names be reported.

The SPEAKER pro tempore. The names have been reported.

Mr. MANN. I would not want to take advantage of the present occupant of the chair.

The committee resumed its sitting with Mr. SAUNDERS in the chair.

The CHAIRMAN. The question now recurs, a quorum of the committee being present, on the amendment offered by the gentleman from California [Mr. RAKER].

The question was taken, and the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

For collection and transportation of pupils to and from Indian schools, and for the transportation of Indian pupils from any and all Indian schools and placing them, with the consent of their parents, under the care and control of white families qualified to give such pupils moral, industrial, and educational training, \$70,000. The provisions of this section shall also apply to native pupils of school age under 21 years of age brought from Alaska.

Mr. MADDEN. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Illinois [Mr. MADDEN] moves to strike out the last word.

Mr. MADDEN. Mr. Chairman, I wish to inquire of the gentleman from Texas [Mr. STEPHENS] in charge of the bill whether this money appropriated in this item is taken out of the Indian funds or whether it is taken out of the Treasury of the United States?

Mr. STEPHENS of Texas. This is a gratuity.

Mr. MADDEN. This is given by the United States Government?

Mr. STEPHENS of Texas. This is a gratuity, given for the purpose of collecting the Indian children from all parts of the United States and sending them to these schools, nonreservation schools, mostly. Of course, it is necessary to take them from the reservations to the schools. This appropriation is for that purpose.

Mr. MADDEN. And the Indian children who are taken to these schools are taken from reservations, where Indians on the reservations have funds of their own, are they not?

Mr. STEPHENS of Texas. That is a gratuity for the purpose of sending them to the nonreservation schools, and after they are there they can be distributed among white farmers for the purpose of having the white farmers teach them to acquire the habits of civilized life.

Mr. MADDEN. Are not the parents of these young Indians able to pay the cost of their transportation to and from the schools out of their own funds?

Mr. STEPHENS of Texas. I do not think that is the case, for the reason that where the Indians have property of their own the parents, in order to keep them at home and prevent them from being sent to distant places, will pay for their education at near-by schools out of their own funds.

Mr. MADDEN. Then this is a compulsory attendance on schools away from home that is to be paid for?

Mr. STEPHENS of Texas. I would not say that it is compulsory. The Indian Department urges parents who are not able to take care of their children at home to send them away to the nonreservation schools. The school at Carlisle, Pa., accommodates about 1,000 pupils. It requires considerable money to get the children there and take them back. During the vacations the children are sent out amongst farmers, who take care of them and teach them the arts of living, and so forth, and the practice is found to be very beneficial to the Indians.

Mr. MADDEN. I know of a great many children of white families throughout the United States who would be glad to have the Government extend its fostering care over them and pay the cost of transportation charges of their children to and from school and board them while they are away and send them back again, and while they are not attending the school teach them the arts of farming and all of those other things that would make them useful citizens in the future.

Mr. STEPHENS of Texas. For the reason that they are the wards of the Government, and we feel ourselves under the obligation, and have for a hundred years felt ourselves under the obligation, to take care of these Indians, and it is only a part of the duty we have assumed. Whether wisely or not, it is too late to change it. We have assumed it and are carrying it out to the very best of our ability.

Mr. MADDEN. It is all very well for us to protect the Indians in every way that is proper and right, but it seems to me that to pay transportation charges from one point in the country to another is going outside of the duty of the Government of the United States, and this appropriation surely ought not to be made.

Mr. STEPHENS of Texas. I will state to the gentleman that if I had had the making of the laws 30 or 40 years ago I would not have launched into the building of these nonreservation schools, but would have instructed the Indians on the reserva-

tions. But having the schools on our hands, having organized them and having hundreds of thousands of dollars invested in industrial plants, I think it would be wrong to stop the schools or cripple them in any way. We had better pursue the course on which we have started.

Mr. MADDEN. I am not in favor of stopping the schools, and I should like to see granted to the Indians all the educational facilities they ought to have to the fullest extent. What I am opposed to is the payment of the expenses of transportation by the Government to the schools and back from the schools to their homes. The gentleman has stated that he would not have been in favor of the establishment of these schools if he had had his way. Would it not be wise for him as chairman of the Committee on Indian Affairs to provide some means by which the Government can save the expense of transporting these children back and forth? I am in favor of the maintenance of the schools.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MONDELL. Mr. Chairman, I rise to oppose the amendment of the gentleman from Illinois [Mr. MADDEN].

Mr. MADDEN. I have offered no amendment.

Mr. MONDELL. This item is a gratuity. A moment ago the gentleman from Illinois [Mr. MADDEN] called attention to the fact that the great bulk of these appropriations are gratuities. It is a remarkable fact that although many of the Indians in the United States are very wealthy, of the amount carried in this bill \$6,084,000 is in the form of gratuities, the reimbursable items amounting to only \$850,000 out of the total appropriation of \$7,674,000. Our school items in Indian appropriation bills have for many years been in the main gratuities. Perhaps that is a good policy and a wise policy, possibly not in all cases.

The item we have just passed, \$300,000 for school buildings, is entirely a gratuity, although some of the buildings contemplated are for Indians like the Crows and the Shoshones, who have hundreds of thousands of acres of valuable land and large sums of money in the Treasury. But it seems to have been the rule of the committee and the practice of Congress in the matter of school appropriations to provide for them gratuitously, without regard to the ability of the Indians to provide for themselves.

That may be justifiable, but I question whether we are justified in expending large sums of public money for the construction of works enhancing the value of the property of the Indians, where such Indians have great areas of land, and in cases where they have cash in the Treasury.

There is a very considerable item in this bill for the construction of irrigation works on Indian reservations.

Mr. MILLER. That is not contained in this paragraph.

Mr. MONDELL. Not in this paragraph, but in a provision which we have passed. I did not have the opportunity to discuss it as I should have liked to discuss it at that time, so I propose to discuss it briefly now.

Among the reclamation works proposed under that item is, for instance, the project for the irrigation of lands of the Navajos under the San Juan project. These Indians have 14,000,000 acres of land, according to the statement of the Commissioner of Indian Affairs. We have already spent \$97,363.77 for that project, and its estimated cost is \$140,000. In addition to that it was necessary to spend from this appropriation last year some \$25,000 to repair temporarily a break in the dam that is being constructed.

Mr. MILLER. How much is that land worth an acre?

Mr. MONDELL. There is a good deal of it that would not bring much per acre. Out of the 14,000,000 acres owned by these Indians there is a considerable amount of land that is of small value.

There are no richer lands on the face of the earth, however, than the lands on the San Juan, where this irrigation project is located. It is the site of an ancient irrigation work, one of the most interesting in the country, where there is an ancient waterway 40 or 50 miles in length, still well preserved; along the line of that canal in the ancient times lived a large population and were many pueblos.

The CHAIRMAN. The time of the gentleman from Wyoming has expired.

Mr. STEPHENS of Texas. Mr. Chairman, I move that all debate on this paragraph be closed in five minutes.

Mr. MONDELL. Mr. Chairman, I ask unanimous consent that I may proceed for five minutes.

The CHAIRMAN. The gentleman from Texas moves that all debate on the paragraph close in five minutes.

The motion was agreed to.

The CHAIRMAN. The gentleman from Wyoming is recognized.

Mr. MONDELL. Mr. Chairman—

Mr. MILLER. Will the gentleman yield?

Mr. MONDELL. Certainly.

Mr. MILLER. The land as it stands is practically valueless, but when irrigated it becomes extremely valuable, and therefore the project must be one of merit. Is not the gentleman aware that it is reimbursable; that the Treasury will be reimbursed?

Mr. MONDELL. On the contrary, I do not understand that a single penny of the appropriation I have referred to is reimbursable, and certainly it can not be held to be reimbursable under the terms of the bill, if the gentleman will read it. The gentleman is a member of the committee and knows perfectly well that no part of that appropriation is reimbursable.

Mr. MILLER. Practically, or under the terms of the bill?

Mr. MONDELL. Practically, or under the terms of the act. No demands can be made on the Indians to return it. There can be no question about that. No demand has ever been or ever will be made on any Indian under this item of appropriation to reimburse the Treasury for the amount expended unless the language shall be changed.

And not only have the Navahos 14,000,000 acres of land, a portion of which is of considerable value, but, in addition to that, they are an industrious people, as Indians go. They have been accustomed to labor; they make great quantities of the finest rugs in the world down there on the Rio Las Animas and the San Juan, and we pay large prices for them. They have a very considerable income, and they live very well, indeed.

I know of no reason why these Indians can not pay for their own irrigation works. I believe it would be better for them if they did. Now, I am not inclined to be parsimonious in the matter of these appropriations. I will go as far as any Member of the House will go in giving the Indians an opportunity to earn a livelihood, but we simply pauperize the Indians when we say to men with large landed estates running into millions of acres, owning some of the fairest valleys on the continent, men who are accustomed to work, families accustomed to work, producing some of the finest specimens of the Indian art, earning a fairly good livelihood, that we will tax the people of the United States for the purpose of building irrigation works for irrigation and fertilization of their land. They have no funds now, but the expenditure for the irrigation of their lands should be made a charge against them, to be paid in the future. This is not the only item under this appropriation where it is proposed to build irrigation works for Indians having enormous landed estates. The Northern Cheyennes are to receive \$8,000 out of this item. They own several hundred thousand acres of very excellent land. There is no reason on earth why the Northern Cheyennes should not reimburse the Government.

Another proposition. It is my opinion that if the Government never did receive all of these sums, if they never were all paid back into the Treasury, the very fact known to the Indians that there was an obligation on their part in the matter, that they were expected to return the money to the Treasury, would in and of itself enhance the value of the property in their eyes, and would tend to teach them and lead them to give better attention to this property and value it more highly than they now do.

The item, among other things, provides for maintenance charges and proposes to expend money to maintain these projects after we have built them. Is it not quite enough to build irrigation works for the Indian and to put it in condition to be used? Must we tax the people forever to pay for their maintenance? If so, it seems to me the expenditure is useless, and instead of accomplishing any worthy or valuable or useful purpose we are simply tending further to pauperize the Indians and build up in their minds the notion that they are getting something for nothing. Build these works by all means, but with the understanding that the Indians are to pay for them.

The CHAIRMAN. The time of the gentleman from Wyoming has expired, and the Clerk will read.

The Clerk read as follows:

All moneys appropriated herein for school purposes among the Indians may be expended, without restriction as to per capita expenditure, for the annual support and education of any one pupil in any school.

Mr. MANN. Mr. Chairman, I reserve the point of order on this. I believe this is current law. What is the effect of this? How does it work out? It was put in in the first place, I believe, as an experiment.

Mr. STEPHENS of Texas. It was formerly restricted to \$167 per capita for each Indian who was taken off the reservation and put into these boarding schools.

Mr. MANN. I understand that is the law.

Mr. STEPHENS of Texas. That limit has been taken off.

Mr. MANN. I think that limit has not been taken off except in the current appropriation law each year. The limit remains, I think. What is the effect of this? It was tried as an experiment. What is the cost of educating these Indians?

Mr. STEPHENS of Texas. In the northern countries, where they have long winters and very cold weather, it is much harder to maintain the Indians, on account of the better clothing they require, than it is in the southern country, in Arizona and New Mexico. That is the difference. I find this memorandum covering this item:

The memorandum covering this item explained that the per capita allowance of \$167 per pupil was adopted by Congress about 25 years ago, and was probably legitimate and proper for many years following. Within the last decade, however, conditions have so altered that the restriction became injurious to the welfare of the schools. With the increasing cost of supplies the necessity was imposed on superintendents of filling their schools in order to maintain a sufficiently full attendance therein to conduct the plant properly and to provide the usual necessities for the school and the Indian children.

Congress has a legitimate check upon the expenditure of any given school in that it requires annually a statement of its cost.

Mr. MANN. The general law provides that the expense of the pupils should not exceed \$167.

Mr. STEPHENS of Texas. That is true.

Mr. MANN. What is the effect of it? Of course, we all know that under ordinary conditions a school that is fairly well filled up can probably get along for \$167 per pupil, but it will cost you a great deal more than that if you maintain a school for one pupil. What is the effect of it all? What has been the actual experience under this experiment?

Mr. BURKE of South Dakota. Perhaps I can answer the gentleman, if the chairman will yield?

Mr. MANN. I have no doubt the chairman of the committee can answer, but I would be very glad to hear from the gentleman from South Dakota.

Mr. STEPHENS of Texas. The larger the school, the less the expense. The gentleman is correct in that statement. Some schools cost more than \$167 per pupil to maintain, while others get along with less, some of them falling as low as \$122 and some running over the limit of \$167. We thought it would be wise to take that limit off and let the matter be adjusted by the department.

Mr. MANN. Is the gentleman able to give the House the per capita expenditure at each of these Indian schools?

Mr. STEPHENS of Texas. We have each one of them provided for here that this would apply to under the heading of the various States.

Mr. MANN. It might be well to let this item remain, then, until after the other matters have been disposed of.

Mr. STEPHENS of Texas. I think not; because this is the existing law, the current existing law, as stated by the department. In each State as we reach it we can give the cost per capita of the schools. Each school is especially provided for, and each is given, stating how many students are in that school, and the amount appropriated for the school.

Mr. MANN. If this item goes in the bill before we take up the others it is beyond us.

Mr. STEPHENS of Texas. I think not.

Mr. MONDELL. Mr. Chairman, will the gentleman yield for a suggestion?

Mr. STEPHENS of Texas. Yes.

Mr. MONDELL. It seems to me the gentleman's statement that the cost depends a good deal on the climate, being higher in the north, is scarcely borne out by the facts. For instance, at the Shoshone Reservation, on the Wind River, Wyo., the cost is \$167, and at Santa Fe and Carson City, Nev., the cost is \$175.

Mr. STEPHENS of Texas. The department is to blame for that. If there are such conditions the supplies have cost more there than in the gentleman's country.

Mr. KENDALL. It depends on what is taught in the school, does it not?

Mr. STEPHENS of Texas. Perhaps so. If one is an industrial school it costs more money to run it.

Mr. FERRIS. Mr. Chairman, the gentleman from Illinois is undoubtedly striking at the question of whether it is advisable to remove this limitation.

Mr. MANN. Yes.

Mr. FERRIS. Dealing with this school item, the commissioner has liberally furnished with justifications and just what it costs at each school. The expense per capita varies to a marked degree. It runs from \$122 up to as high as \$247. I think, at one place, but there might be a reason for that which I think would satisfy the gentleman. In other words, at one school they have a school farm and they raise a part of what they eat there. That naturally reduces the grocery bill and expenses of running the school. At another place they have to

haul their provisions farther from the market, so the drayage and hauling facilities cost more, and while there is some danger attached to removing a limitation of this kind there are a good many advantages. The commissioner who appeared before us went to great lengths and was unusual in his insistence that that remain, so he might do full justice to each particular school. For instance, when a tribe has diminished or intermarried or gradually coalesced and joined the white people, as some are in some localities, the Indian school becomes less and less in numbers all the while, but the commissioner has power to recommend the discontinuance of these schools, and if it reaches the stage where Congress will no longer provide for it, Congress will discontinue them.

Mr. MANN. He has the power to recommend the discontinuance, but he has no power to discontinue them.

Mr. FERRIS. I did not assert he had that power.

Mr. BURKE of South Dakota. If the gentleman from Illinois will permit, supplementing what the gentleman from Oklahoma has stated, we went into this matter very closely in the hearings on the last year's appropriation bill, and we found we were not spending any more for education now than we were when the limitation was in force and educating just as many children; but, as the gentleman says, in some instances it exceeds \$167.

Mr. MANN. This item was inserted in the Indian appropriation a few years ago, and it was then stated, as I recall, that it was to be in the nature of an experiment and at the proper time the House would be given full information as to that experiment and the effect of making this change. So far we have had no information upon the subject, except in a general way. The gentleman has made a statement, but it seems to me this limitation either ought to go out of the bill or else be postponed until the House has acted upon the specific appropriations.

Mr. FERRIS. Does not the gentleman think that due to the method of making the estimates, handling each school as an entity and each State as a separate matter, that the question of dealing with the per capita expenses is, as it should be, in each respective State and each respective school?

Mr. MANN. Oh, I think it is desirable to do it in the way the committee has done it in that respect, but I am not sure it is desirable to remove the restriction of \$167, which ought to be, in the ordinary course, the full amount of the expenditure for each pupil in the school.

Mr. FERRIS. Well, I know of no particular grievances to any people with whom I am acquainted if this was stricken out, but the Commissioner of Indian Affairs was exceedingly insistent about this.

Mr. KENDALL. Is not that because he claimed experience justified the change, because it has been demonstrated that \$167 in some localities under circumstances referred to by the gentleman from Texas is not sufficient for the purpose?

Mr. FERRIS. Precisely.

Mr. KENDALL. There is no danger, I think, in adopting the modification made by the committee or recommended by the committee. These sums are to be safeguarded as they always have been.

Mr. FERRIS. This is not a new matter. It is a matter which has been carried in the bill for several years, and we merely reincorporate it at the strong solicitation of the commissioner himself, who insisted that some latitude in dealing with these different schools should be allowed.

Mr. MANN. Mr. Chairman, I do not like to put my own judgment in these cases against the committee's judgment, although I had hoped that the committee would explain why the per capita expenditure at certain schools was much above the limit authorized by law.

Mr. McGUIRE of Oklahoma. Will the gentleman permit a suggestion? I call his attention to one particular instance, and that is the Cushman School in Washington, where some time ago they added what they called a mechanical department, and a great number of pupils are being employed now in that part of the institution, where they have installed machinery and where they are making things of iron and wood. I was talking to the superintendent the other day and he told me that had increased the cost per capita, but that ultimately there would be no increase.

There is a disposition now on the part of the heads of these institutions to increase the number of things taught in order that the pupil may be made more practical; that is, by teaching him carpentry and blacksmithing and all that sort of thing. Heretofore they have been instructing them in agriculture, and that was about all. But where they add these things, there is an additional cost, and I know nothing as to whether that

additional cost would continue, except from the statement of superintendents.

Mr. MANN. I understood the gentleman to say that the Cushman School put the Indians at work doing blacksmithing and other labor in connection with ironwork on the institution, and therefore that added to the cost of maintaining the pupils.

Mr. McGUIRE of Oklahoma. In making things, perhaps not alone for the institution.

Mr. MANN. For other people?

Mr. McGUIRE of Oklahoma. For other people.

Mr. MANN. Who got the benefit of that?

Mr. McGUIRE of Oklahoma. The installation of the machinery is an additional cost.

Mr. MANN. By what authority? We make an appropriation for the installation of machinery, and if any pupils did that the school gets paid for it.

Mr. McGUIRE of Oklahoma. That is true; but I take it that certain installations may be made without any specific legislation. There is a general appropriation for these institutions, and the commissioner is allowed some discretionary power.

Mr. MANN. Does my friend from Oklahoma maintain that these pupils could be employed by the school, adding something new to the buildings, and that that should be charged to the maintenance of the school?

Mr. McGUIRE of Oklahoma. I do not mean to say that the fact of the additional things taught of itself would increase the cost per capita to the pupil. But if they installed new machinery that would temporarily increase the cost, whether they made them for the school or any other purpose. While I think the item ought to go out, in deference to the gentlemen of the committee I will withdraw the point of order.

Mr. MADDEN. I reserve the point of order so as to ask the chairman of the committee a question. I wish to know whether \$167 limit of cost for the education of each Indian pupil includes the cost of transportation.

Mr. STEPHENS of Texas. It does not. There is a separate fund here.

Mr. MADDEN. What is the cost per capita for transportation?

Mr. STEPHENS of Texas. It varies according to distance.

Mr. MADDEN. There must be a cost per capita.

Mr. STEPHENS of Texas. Some of them are from Oregon or from Washington, and they travel to Carlisle, for instance.

Mr. MADDEN. There must be so much per capita.

Mr. STEPHENS of Texas. The figures are here, and the gentleman could very easily ascertain the amount.

Mr. MADDEN. I thought maybe the committee knew, and we might be able to get the information through the channel that had it.

Mr. STEPHENS of Texas. As I understand the matter, these men are sent out from the schools, and they gather up all the Indians that can be had in various communities and take them on the cars and carry them to the schoolhouse, and when the schools are out, unless they are distributed over the country among the farmers, they are sent back. As I understand the matter, all the expense is railroad expense of transporting the pupils and the expense of the man who attends them.

Mr. MADDEN. Can the gentleman state whether it is \$50 per capita, or \$100, or \$25?

Mr. STEPHENS of Texas. It would be as impossible to state as it would be to state how much the average amount is that we draw for mileage here. I do not think that has ever been averaged up.

Mr. MADDEN. Oh, yes.

Mr. STEPHENS of Texas. Per capita for each individual Member of the House?

Mr. MADDEN. Yes.

Mr. STEPHENS of Texas. I have never done it, and I have never seen such a statement.

Mr. MADDEN. We know the amount of mileage which is paid and the number of men, and all you would have to do would be to divide one by the other and get the per capita cost.

Mr. BURKE of South Dakota. At the Carlisle School, including the cost of transportation, the pupils being brought long distances, in many instances, the education is as low or lower than at any other school in the service.

Mr. MADDEN. What does that mean?

Mr. BURKE of South Dakota. It means it is a large school, and that the sources of supply are nearer available than at some of these other schools. The Government is not losing anything, because the per capita cost, as I have stated, is lower than at any other school, I think, that we have in the country.

Mr. KENDALL. The gentleman means not losing anything in comparison with other schools?

Mr. BURKE of South Dakota. Other schools.

Mr. MADDEN. Would it not be economy to transfer the Carlisle School to a place more adjacent to the people to be educated?

Mr. BURKE of South Dakota. If it was not for the Carlisle School, I would not be in favor of an appropriation to build a school at Carlisle.

Mr. MADDEN. The gentleman thinks the expenditure for the maintenance of these schools and the transportation of the pupils from one point to the other is justified?

Mr. BURKE of South Dakota. I do.

Mr. MADDEN. But nobody knows the cost per capita.

Mr. STEPHENS of Texas. I think I can give the gentleman the information right here. The amount required for the transportation of pupils for 1914 is \$82,000. The enrollment of the nonreservation schools for the fiscal year ending June 30, 1911, was 7,134, and for the fiscal year ending June 30, 1912, it was 8,212.

Mr. MONDELL. Was the gentleman inquiring as to the cost per capita at the schools?

Mr. MADDEN. Yes; and the cost of transportation per capita.

Mr. STEPHENS of Texas. The transportation cost is about eight and one-third dollars for each pupil.

Mr. MADDEN. How many pupils is the man who gathers them up supposed to bring in one cargo?

Mr. STEPHENS of Texas. I do not think they could possibly have any definite rule about that. They gather them in the different reservations in the best way they possibly can.

Mr. MADDEN. Do any of these pupils go to the schools from their homes without any attendant?

Mr. STEPHENS of Texas. I do not quite understand the gentleman.

Mr. MADDEN. I understood the gentleman from Texas to say that they had men in charge who were responsible for gathering the pupils up in the places where they live and taking them to the schools in the various parts of the country.

Mr. STEPHENS of Texas. They are competent men in the lines along which they are educated, and they become good citizens.

Mr. MADDEN. What I want to know is whether any of these Indian children go to the schools without a guide?

Mr. STEPHENS of Texas. Oh, it is only the smaller children who are supposed to be incompetent to take care of themselves and require guides. The smaller ones do have guides.

Mr. BURKE of South Dakota. Mr. Chairman, last week during the general debate on the Indian appropriation bill in connection with some remarks I brought to the attention of the House a report made by Mr. M. L. Mott, tribal attorney for the Creek Nation, showing a deplorable condition of affairs with reference to extravagance on the part of guardians in the handling of Indian minor estates in the probate courts in the several counties comprising the Creek Nation. The gentleman from Oklahoma [Mr. DAVENPORT], without attempting to defend the charges contained in the report, assailed the author of it, Mr. Mott, and attempted to make it appear that he is not responsible, and I think it was charged that he is a "carpetbagger." I am just in receipt of a letter from Moty Tiger, principal chief of the Creek Nation, in which he states that Mr. Mott has been the attorney for the tribe since 1904, and that his services have been entirely satisfactory, and that though he—the principal chief—is a Democrat and Mr. Mott a Republican that he will continue Mott as attorney for the tribe while it is within his power to do so; and in this letter he mentions a number of important matters where Mr. Mott has succeeded in protecting the Indians against legislation that had been enacted relating to taxation of their lands and other important matters, and that he had done so in several cases by going to the Supreme Court of the United States and securing a favorable decision, notwithstanding the Supreme Court of the State of Oklahoma had decided against the Indians. For the purpose of giving the House the opinion of the principal chief as to his estimate of Mr. Mott and to show some of the things that Mr. Mott has accomplished for the Indians, I send to the Clerk's desk and ask to have read the letter I have referred to:

WASHINGTON, D. C., December 17, 1912.

HON. CHARLES H. BURKE,
United States House of Representatives,
Washington, D. C.

MY DEAR SIR: I noticed in the proceedings of the House on last Thursday, and when a report by Mr. Mott on probate conditions was under consideration, that members of the Oklahoma delegation expressed a desire to get rid of Mr. Mott as attorney for the Creek Tribe of Indians, and declared that they would gladly pay the cost of transporting him out of the State of Oklahoma. That you and Congress should have some idea of the value of the services rendered the Indians in Oklahoma by Mr. Mott, I hand you this communication.

Mr. Mott was appointed attorney for the Creek Tribe by General Porter, late chief of the Creek Tribe, in May, 1904.

The treaty of 1902 provided that none of the surplus lands of members of the Creek Tribe should be alienable for a period of five years. In 1904, two years after the ratification of this treaty by Congress and just a month before Mr. Mott's appointment, Congress removed the restrictions on the surplus lands of all freedmen members of the tribe. Within 60 days of the passage of this act there was not one adult freedman in ten who owned an acre of his surplus lands or had a dollar in money to show for it.

The conditions following this legislation were so disastrous and destructive that Mr. Mott determined to use every effort to extend the period of restriction on the lands of the Indian members of the tribe beyond the five-year period provided for in said treaty or agreement, and thereupon he, together with the chief of the Creek Tribe and the Creek delegation, came to Washington and prevailed upon Senator McCUMBER to offer an amendment to the Indian appropriation bill of 1906 extending the restrictions on full-blood Indians of the Five Tribes for a period of 25 years.

Senator McCUMBER stated on the floor of the Senate that he was not sure of the constitutionality of the legislation, but insisted that the legislation should pass, and in support of the necessity for the same had read from the Clerk's desk and inserted in the Record a statement by Mr. Mott of the conditions in Indian Territory and what would be the result when the restrictions were taken off these lands. There were also published in the Record at the time statements by the chief and the delegation. The amendment was passed and became a law, and but for this amendment there would not be one member of the tribe in ten who would to-day own a foot of land other than his restricted homestead.

The constitutionality of the McCumber amendment was attacked in the Marchie Tiger case. The courts sustained and upheld the amendment.

Prior to the act of May 27, 1908, the Indian land grafters in Oklahoma had secured from full-blood Indians deeds to thousands of tracts of inherited lands. These deeds were secured by all kinds of fraud and for comparatively no consideration, and the lands so conveyed were worth into the millions.

Mr. Mott took the position that all conveyances by full-blood Indians prior to the act of May 27, 1908, were void unless the same had been approved by the Secretary of the Interior, and in accordance therewith there was filed a suit contesting the legality of these conveyances.

In this case, commonly known as the Marchie Tiger case, the State Supreme Court of Oklahoma held these deeds to be good and valid. On a writ of error the case was brought to the Supreme Court of the United States, and this court, in an undivided opinion, reversed the Supreme Court of Oklahoma and held all these deeds and conveyances to be absolutely void, and thereupon millions of dollars were saved to the full-blood Indians of the Five Tribes.

When in 1908, the first year after statehood for Oklahoma, Congress, upon the earnest and persistent insistence of the Oklahoma delegation, removed restrictions from much of the land of the members of the Five Tribes and declared such lands subject to taxation, Mr. Mott resisted this legislation and insisted to the department and the committees of Congress that under the agreements of the Government with the Indians to exempt certain lands from taxation for a certain period Congress, under the Constitution, had no authority to authorize the State of Oklahoma to tax said lands.

One year in advance of any action by anyone else Mr. Mott secured from the Creek council an appropriation of funds to resist the taxation of these said lands. Injunction suits were filed in all the counties comprising the Creek Nation. Subsequently like suits were filed in the Choctaw and Chickasaw Nations.

The Supreme Court of Oklahoma held the lands to be taxable. On a writ of error the Creek case was brought to the Supreme Court of the United States. The Choctaw and Chickasaw cases followed, and were later advanced to be heard with the Creek case.

Only the homesteads of Creek citizens being involved, whilst both the allotments and homesteads of the Choctaw and Chickasaws were involved, the court handed down the decision in the Choctaw case and, in an undivided opinion, reversed the Supreme Court of Oklahoma, holding that said lands were not taxable and legislation by Congress authorizing their taxation to be unconstitutional, thus saving to the Indians of the Five Tribes many millions of dollars in taxes. And it is within my knowledge that the department gives to Mr. Mott the full credit for the institution of this litigation and the benefits accruing therefrom to the tribe.

Mr. Mott, in 1906, after numerous efforts, caused to be had an investigation of the fraudulent scheduling of town lots in the Creek Nation. This investigation resulted in the filing of a large number of suits by Mr. Mott against many prominent citizens, including the former governor of the State. These civil suits resulted in the indictment of a number of these prominent citizens. The indictments finally went out of court on the statute of limitations, pleaded by the defendants.

A number of the civil cases are still pending; a number have been settled, and in such settlements Mr. Mott has collected, in round numbers, \$100,000, and turned the same over to the Secretary of the Interior, and which has been deposited in the Treasury to the credit of the Creek Nation. There has also been secured decrees of the court on ninety-odd lots, valued at not less than \$60,000. An additional recovery of \$125,000 on the remaining suits is a conservative estimate. And it is for these things that thousands in Oklahoma would rejoice to see Mr. Mott's services to the Indians terminated. He is in the way of those who want to despoil and plunder my people.

Mr. Mott is a Republican. I am a Democrat. But I am first and last for my oppressed people. And so long as I am chief, Mr. Mott, if he desires and I can have my way, will remain the attorney for the Creek Tribe.

I desire to express to you my deepest appreciation for your stand on behalf of the Indians in the State of Oklahoma.

Very respectfully, yours,

MOTY TIGER,
Principal Chief of the Creek Nation.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

To conduct experiments on Indian school or agency farms designed to test the possibilities of soil and climate in the cultivation of trees, grains, vegetables, and fruits, for the purposes of preserving living and growing timber on Indian reservations and allotments, and to advise the Indians as to the proper care of forests: *Provided*, That this shall not, as to timber, apply to the Menominee Indian Reservation in Wisconsin; for the employment of suitable persons as matrons to teach

Indian women housekeeping and other household duties, and for furnishing necessary equipments and renting quarters for them where necessary; for the employment of practical farmers and stockmen, in addition to the agency and school farmers now employed; and to superintend and direct farming and stock raising among Indians. \$300,000: *Provided further*, That not to exceed \$5,000 of the amount herein appropriated may be used to conduct experiments on Indian school or agency farms to test the possibilities of soil and climate in the cultivation of trees, grains, vegetables, and fruits: *Provided also*, That the amounts paid to matrons, farmers, and stockmen herein provided for shall not be included within the limitation on salaries and compensation of employees contained in the act of June 7, 1897.

Mr. MANN. Mr. Chairman, I reserve a point of order on the paragraph.

The CHAIRMAN. The gentleman from Illinois [Mr. MANN] reserves a point of order on the paragraph.

Mr. MONDELL. Mr. Chairman, I move to strike out, on line 24, page 5, the words "\$300,000," and insert in lieu thereof the words "\$400,000."

The CHAIRMAN. The question is on the point of order.

Mr. STEPHENS of Texas. I hope, Mr. Chairman, that the amendment will not prevail.

The CHAIRMAN. The question is on the point of order made by the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Chairman, may I ask the gentleman from Texas in charge of the bill just what is the necessity of continually providing that the salaries paid to the officials employed under this appropriation shall not be included within the limitation of salaries provided by law? How much is paid, as a matter of fact, in the way of salaries to the persons employed as matrons, farmers, and stockmen?

Mr. STEPHENS of Texas. The question is why?

Mr. MANN. Yes; both why and how much.

Mr. STEPHENS of Texas. I will give the statement that is printed here:

This estimate provides mainly for the continuation of those positions which are now in force and the establishment of other positions at places where the present force is inadequate or where no farmers are employed at all.

We are following up the old law, with the same salaries and with the same amounts as heretofore. They have repeatedly asked for more salaries, and we have refused to allow them in this bill and in other bills. This is simply a repetition of the law as it has existed for several years.

Mr. MANN. Of course under this language they could pay as much salary as they pleased. The commissioner could double the salary if he chose to do so. What are the salaries now paid to the matrons, farmers, and stockmen?

Mr. STEPHENS of Texas. I will give the gentleman what the department says here:

Two hundred and thirty thousand dollars of the \$400,000 appropriated for the current fiscal year was set aside for agricultural and stock purposes, \$120,000 for forestry work, and \$50,000 for the employment of field matrons. One supervisor, at \$3,000 per annum, and one superintendent of live stock, at \$2,000, are paid from this appropriation. These men have no particular districts assigned to them, but are subject to the direction of the Commissioner of Indian Affairs, and visit all the reservations. In addition to their salaries the supervisors of farming and superintendent of live stock receive per diems ranging from \$3 to \$2.50, respectively, in lieu of subsistence when away from their headquarters.

Mr. MANN. What is the gentleman reading from, may I inquire?

Mr. STEPHENS of Texas. I am reading from page 29 of the hearings on the Indian appropriation bill, where this item is explained by the department. Those are the items given by the department to the committee.

Mr. MANN. The postponement of the consideration of the bill the other day has accomplished one good thing, and that is it has enabled the members of the committee to get copies of the printed hearings.

Now I want to ask another question. This is a legitimate question, especially in view of the attitude of the gentlemen on the other side and their probable action after the 4th of March next. How much pay do the matrons receive? How much do the farmers get paid and how much do the stockmen get paid? How can the gentleman from Texas and his colleagues on that side tell whether they would wish to recommend their constituents for appointment to these places unless they know how much the compensation is?

Mr. FOSTER. Is my colleague able to give to this side of the House the same information that that side of the House has enjoyed for some years?

Mr. MANN. I can give some information to my colleague from Illinois.

Mr. FOSTER. I will say to my colleague that after we get in we shall be able to find these places without any difficulty. [Laughter.]

Mr. MANN. I am asking for information.

Mr. STEPHENS of Texas. The amount of \$50,000 is given for the payment of field matrons. Does that answer the gentleman's question?

Mr. MANN. No. What is the salary of the matron? What is the salary of the farmer? What is the salary of the stockman?

Mr. STEPHENS of Texas. Fifty thousand dollars is paid to the matrons.

Mr. MANN. How many of them are there?

Mr. FOSTER. Probably in the past they have just been apportioning this \$50,000 on that side as they saw fit.

Mr. MANN. I can remember when I used to ask the chairman of the Committee on Indian Affairs on this side the same questions in former years, and the information was forthcoming, and I am sure it will be forthcoming now.

Mr. STEPHENS of Texas. I will give the gentleman the information, which comes from his side of the House, if he wants to put it in a political sense. The salaries have all been fixed by the Indian Bureau. Certainly the gentleman has no right to complain.

Mr. MANN. I am not complaining. I am asking for information.

Mr. STEPHENS of Texas. I am trying to give it to you.

Mr. MANN. "Trying" is a good word.

Mr. STEPHENS of Texas. The salaries of the expert farmers range from \$1,000 to \$1,500 per annum. There is only one man employed, however, at \$1,500, and this man has charge of the demonstration farm on the Fort Berthold Indian Reservation, established in pursuance of the act of June 1, 1910, and also has general supervision of the farming operations throughout the reservation. He is not confined to one place, but has charge of everything.

Mr. MANN. That is, one man?

Mr. STEPHENS of Texas. The usual salary paid such employees is \$1,200 a year.

Mr. MANN. Is that for farmers or stockmen?

Mr. STEPHENS of Texas. The salaries of expert farmers range from \$1,000 to \$1,500. The salaries of stockmen range from \$726 to \$1,200 per annum. While the figures for the fiscal year 1912 are not yet complete, the reports which are being received from the various reservations indicate that there has been a revival of interest in agricultural pursuits on the part of the Indians, and there is in some localities need for the employment of more men to direct the operations of the Indians and advise them, not only in the proper method of cultivating their crops and the care and upbreeding of their live stock, but also in helping them find markets where the best returns may be produced for their products.

Mr. MANN. What are the salaries of the matrons?

Mr. STEPHENS of Texas. The sum of \$50,000 is appropriated to pay the matrons on the various reservations. Each reservation has a certain number of matrons allotted to it.

Mr. MANN. The gentleman has not the information as to the amount paid each one?

Mr. STEPHENS of Texas. The department does not give that information.

Mr. MANN. That answers the question.

Mr. STEPHENS of Texas. Therefore I can not state.

Mr. MANN. I am very much obliged to the gentleman.

Mr. STEPHENS of Texas. I can not state it for the reason that it is given under the head of the various reservations.

Mr. MANN. I am not complaining. I am very much obliged to the gentleman for the information, and in view of the information I withdraw the point of order.

Mr. FOWLER. I renew the point of order.

Mr. DIES. I should like to know, Mr. Chairman, who has the floor.

Mr. STEPHENS of Texas. I think the gentleman from Illinois [Mr. MANN] took the floor to interrogate the chairman of the committee.

The CHAIRMAN. The gentleman from Illinois [Mr. MANN] took the floor and reserved a point of order.

Mr. MANN. I now withdraw the point of order.

Mr. FOWLER. And I have renewed it.

Mr. MONDELL. Mr. Chairman, may I be recognized on my amendment?

Mr. FOSTER. The gentleman from Illinois [Mr. FOWLER] has reserved a point of order.

The CHAIRMAN. The gentleman from Illinois [Mr. FOWLER] has renewed the point of order.

Mr. FOWLER. I reserve the point of order. I desire to ask the chairman of the committee if the \$1,420,000, provided for on page 4, for day and industrial schools carries with it also

the power to use a portion of that money to teach Indians how to farm?

Mr. STEPHENS of Texas. I do not think it does.

Mr. FOWLER. My understanding has always been that in connection with the industrial schools farming is taught.

Mr. DIES. Mr. Chairman, I make the point of order that the gentleman from Illinois is not discussing the point of order.

Mr. FOWLER. Mr. Chairman, I had reserved a point of order, and if the gentleman from Texas had been listening he would not have interrupted this committee on his point of order.

The CHAIRMAN. The gentleman from Illinois will proceed.

Mr. DIES. Mr. Chairman, I would like to know if the gentleman from Illinois is not discussing the point of order what right he has to the floor?

The CHAIRMAN. The gentleman from Illinois reserved the point of order, and is engaged in making some inquiries of the chairman of the committee, the gentleman from Texas.

Mr. FOWLER. I desire to ask if it is not a fact that agriculture is taught in the industrial schools instituted for the benefit of the Indians?

Mr. FERRIS. If the gentleman will pardon me, I will say that the \$1,420,000 provided for the Indian schools, some of which are industrial schools, and some of the money in the natural course of things is spent in connection with what they call the school farm—that is, the farm used in conjunction with the schools. The item under discussion particularly relates to individual field matrons and field farmers and those who go out and help the Indians who try to carry on agriculture on their own hook.

As the gentleman knows, a great many Indians are out on allotments, and as they begin to settle they get advice and help of the Indian farmers and the matrons and the Indian farmers.

Mr. FOWLER. I call the attention of the gentleman from Oklahoma to the fact that the paragraph begins as follows:

To conduct experiments on Indian schools or agency farms.

Mr. DIES. Mr. Chairman, I renew my point of order that the gentleman from Illinois is not proceeding according to the rules.

The CHAIRMAN. The gentleman from Illinois is recognized under the familiar practice in the Committee of the Whole to extend recognition, when requested, to a Member reserving a point of order. Strictly speaking under this recognition the gentleman is not entitled to five minutes, if objection is made. But the usual practice allows him to proceed in the absence of objection for certainly as much as five minutes.

Mr. STEPHENS of Texas. If the gentleman will look further he will find that the funds are to be expended on Indian reservations and on Indian allotments and for giving advice to the Indians on the proper care of forestry, and so forth.

Mr. FOWLER. That is true, but the committee provides specifically for experiments on Indian schools and agency farms. What I am trying to get at is that I do not want any lapping in this matter. If there is an appropriation made for the benefit of teaching the Indians farming in connection with these industrial schools, then I can not see what use there will be in making appropriations again for the same purpose under a different item.

Mr. FERRIS. I can readily see from the reading of the language that it looks as if there might be a lapping over and a conflict, but practically there is not. The money they use in connection with the school farm is independent of the matrons and the agents and what they call farmers. For example, in my own county we have an Indian school.

Mr. FOWLER. An industrial Indian school?

Mr. FERRIS. It is. They have alfalfa and raise corn, and so forth.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. FERRIS. I ask unanimous consent that the gentleman from Illinois have five minutes more.

Mr. DIES. I object.

Mr. FERRIS. I hope the gentleman from Texas will not object.

Mr. DIES. I object because I do not think the gentleman from Illinois properly had the floor.

The CHAIRMAN. The Chair will say to the gentleman from Texas that the gentleman from Illinois rose, obtained recognition, and thereupon reserved a point of order. Under our practice, he was thereupon entitled to proceed for five minutes, and longer if no objection was made. This practice is a mere convention, a system of informal procedure which has grown up as a matter of convenience, and is favored because in the main it really expedites business. The gentleman from Illinois has used his time to make inquiries of the gentleman relating

to the paragraph just read. This is in conformity with what the Chair understands to be a practice of long standing, and general acquiescence. The five minutes having expired, the Chair called the attention of the gentleman from Illinois to that fact.

Mr. FERRIS. Does the gentleman from Texas still object?

Mr. DIES. I do object.

Mr. FERRIS. Mr. Chairman—

The CHAIRMAN. Just one moment. Does the gentleman from Oklahoma ask unanimous consent to reply to the gentleman from Illinois for five minutes?

Mr. FERRIS. Mr. Chairman, I move to strike out the last word.

Mr. MONDELL. But that motion is not in order.

Mr. FERRIS. Then, Mr. Chairman, I move to strike out the last two words.

Mr. MONDELL. That is not in order.

Mr. FERRIS. Mr. Chairman, I ask unanimous consent to reply to the gentleman's point of order.

The CHAIRMAN. The gentleman from Oklahoma asks unanimous consent to reply to the gentleman from Illinois. Is there objection?

Mr. DIES. Mr. Chairman, I object, for the reasons stated.

The CHAIRMAN. Objection is heard.

Mr. CAMPBELL. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. CAMPBELL. Mr. Chairman, I think we may as well settle the question of order here. I ask the question that we may settle the question of order. The gentleman from Illinois reserved the point of order and proceeded to ask the chairman of the committee in charge of the bill some questions, as he had a right to do. It was the right of the Chair to shut him off at any time he saw fit. The gentleman from Oklahoma now has a perfect right on a question of order, the point of order not having been withdrawn, to proceed without unanimous consent, as I understand the rules and practice of the House, and to proceed within the discretion of the Chair, not for 5 minutes, not for 10 minutes, but for an hour, if the Chair will permit the discussion.

The CHAIRMAN. The gentleman from Illinois reserved a point of order to the paragraph, and asked to be recognized. Recognition was extended. Some objection being made, the Chair stated that the recognition would be limited to five minutes. At the expiration of five minutes, the gentleman from Illinois was so informed. The gentleman from Oklahoma asked unanimous consent to proceed for five minutes, and the Chair put that request to the committee and objection was made. That is the exact parliamentary situation.

Mr. MANN. Mr. Chairman, will the Chair recognize me for a suggestion?

The CHAIRMAN. The gentleman from Illinois is recognized.

Mr. MANN. The Chairman stated, and stated correctly, that in the practice of the House where a point of order is reserved gentlemen are recognized on the floor for a discussion for five minutes. Any gentleman at any time can insist upon the point of order being determined by making the point of order himself. Until some one does make the point of order or insists upon a ruling I think the practice is that the Chair recognizes gentlemen on the floor to discuss the merits for five minutes, under which provision the gentleman would be entitled to be heard.

The CHAIRMAN. There was no request upon the Chair for recognition to discuss the merits. The gentleman from Oklahoma asked unanimous consent to proceed and that was refused.

Mr. FERRIS. I now ask to be heard on the point of order that has been reserved.

Mr. DIES. Mr. Chairman, I make a motion to strike out the last word.

The CHAIRMAN. The Chair does not see how the gentleman can be heard on a point of order that has been reserved and not made.

Mr. FERRIS. I thought it was agreed, both by the Chair and also by the suggestion of the gentleman from Illinois, that it was within the discretion of the Chair to hear gentlemen so long as the point of order was reserved.

The CHAIRMAN. The Chair does not see how the gentleman can be heard on a point of order that is reserved. There is nothing before the committee.

Mr. FERRIS. The practice is so uniform here in the House that when a point of order is reserved almost universally, I think, different Members proceed to explain the section, and that is what I am seeking to do now—to explain away the objections of the gentleman from Illinois. I think that is the uniform practice.

The CHAIRMAN. The Chair understands the conventions of the committee; but when objection is formally made quite a different situation is presented.

Mr. FERRIS. Have I not, within the province of the Chair, the right to proceed, independently of objection, in my own right, so long as the point of order is not made?

The CHAIRMAN. In respect to what?

Mr. FERRIS. In respect to the section on which the point of order is reserved.

The CHAIRMAN. The point of order was reserved by the gentleman from Illinois, and his rights, if any, were exhausted, in the opinion of the Chair, at the expiration of five minutes. There is no point of order to discuss, none having been made.

Mr. FERRIS. I think the practice has been otherwise, Mr. Chairman; and if I may, I would like to proceed to reply to the gentleman.

Mr. CARTER. Mr. Chairman, is there not just as much now before the committee as there was when the gentleman from Illinois was addressing the committee a few moments ago?

Mr. FERRIS. The reservation of the point of order, under the convention of the House, gives the gentleman who reserves the point of order the right to the floor for five minutes, informally. That has been the practice of the committee.

The CHAIRMAN. But not after objection is made.

Mr. CARTER. Objection had not been made.

The CHAIRMAN. Objection has been made by the gentleman from Texas [Mr. DIES]. The gentleman from Texas asked how the gentleman had the floor, and the Chair explained the situation to him.

Mr. DIES. Mr. Chairman, I move to strike out the last word.

Mr. FOSTER. Mr. Chairman, I call for the regular order.

The CHAIRMAN. The gentleman from Oklahoma asked recognition of the Chair.

Mr. MANN. Mr. Chairman, it seems to me we ought to have more Members present, and therefore I make the point of order that there is no quorum present.

Mr. RODDENBERRY. Mr. Chairman, I desire to make a parliamentary inquiry. Under the ruling of the Chair, at the expiration of five minutes—

The CHAIRMAN. The gentleman from Georgia will state his parliamentary inquiry.

Mr. MANN. I submit a parliamentary inquiry can not be made when a point of order of no quorum present is made.

The CHAIRMAN. Well, the gentleman from Illinois was not recognized by the Chair, but the gentleman from Georgia was recognized to state a parliamentary inquiry. He is now stating it.

Mr. MANN. I beg the Chair's pardon; he does not have to be recognized to make a point of order of no quorum present.

The CHAIRMAN. The Chair recognized the gentleman from Georgia to propound a parliamentary inquiry.

Mr. MANN. But I can take the gentleman off the floor—

The CHAIRMAN. The Chair has recognized the gentleman from Georgia to propound a parliamentary inquiry.

Mr. MANN. Mr. Chairman, I make the point of order that there is no quorum present in the committee.

The CHAIRMAN. The gentleman from Georgia will state his parliamentary inquiry.

Mr. MANN. Mr. Chairman, I call attention to the fact that there is no quorum present in the committee.

The CHAIRMAN. The gentleman from Georgia will propound his parliamentary inquiry.

Mr. RODDENBERRY. Under the ruling of the Chair that the gentleman from Illinois having reserved a point of order and by the reservation having been recognized is entitled to five minutes, that time having expired the gentleman from Oklahoma having addressed the Chair and having been recognized might have obtained the floor by himself reserving the point of order, could he not?

The CHAIRMAN. The matter contained in the gentleman's inquiry is no longer before the committee. It is not a present question, but a moot one. The Chair of course when objection is made can require a Member reserving a point of order to proceed to state it.

Mr. MANN. Mr. Chairman, I make the point of order there is no quorum present in the committee.

The CHAIRMAN. The Chair will count. [After counting.] The Chair sustains the point of order, and the Clerk will call the roll.

The Clerk began the calling of the roll.

Mr. BUCHANAN. Mr. Chairman, I move that the committee do now rise.

Mr. STEPHENS of Texas. Mr. Chairman, I make the point of order against the motion of the gentleman for the reason that the roll call is in progress.

The CHAIRMAN. The Chair had directed the roll to be called, and in due course this was being done. The point of order is sustained.

Mr. STEPHENS of Texas. The Clerk had called one name. The roll was called, and the following Members failed to answer to their names:

Adair	Driscoll, D. A.	Kendall	Pujo
Adamson	Edwards	Kennedy	Rainey
Aiken, S. C.	Elberbe	Kent	Randall, Tex.
Akin, N. Y.	Esch	Kindred	Ransdell, La.
Ames	Estopinal	Kitchin	Reyburn
Anderson	Evans	Knowland	Richardson
Andrus	Fairchild	Konig	Riordan
Ansberry	Finley	Korbly	Roberts, Mass.
Anthony	Floyd, Ark.	Lafean	Roberts, Nev.
Barchfeld	Focht	Lafferty	Robinson
Barnhart	Fordney	Langham	Rodenberg
Bartholdt	Fornes	Langley	Rothermel
Bartlett	Foss	Lawrence	Rouse
Bates	Francis	Logare	Rucker, Mo.
Bathrick	Fuller	Levy	Scott
Bell, Ga.	Gallagher	Lewis	Scully
Berger	Gardner, Mass.	Lindsay	Sels
Boehne	Garner	Linthicum	Shackelford
Boohar	George	Littlepage	Sharp
Bradley	Gill	Littleton	Sherwood
Brantley	Gillett	Longworth	Simmons
Broussard	Glass	Loud	Slemp
Brown	Goeke	McCall	Small
Burgess	Goldfogle	McCreary	Smith, Cal.
Burke, Pa.	Goodwin, Ark.	McHenry	Smith, N. Y.
Burke, Wis.	Gould	McKellar	Sparkman
Burleson	Graham	McKenzie	Speer
Calder	Gray	McKinley	Stack
Carlin	Green, Iowa	McMurrin	Stanley
Cary	Greene, Mass.	McMoran	Stephens, Nebr.
Claypool	Greene, Vt.	Maher	Sterling
Clayton	Gregg, Pa.	Martin, Colo.	Sulloway
Cline	Gregg, Tex.	Matthews	Sulzer
Conry	Griest	Mays	Switzer
Cooper	Gudger	Merritt	Taggart
Copley	Guernsey	Moon, Pa.	Talbot, Md.
Covington	Hamill	Moon, Tenn.	Taylor, Ala.
Cox, Ohio	Hanna	Moore, Pa.	Taylor, Colo.
Crago	Hardwick	Moore, Tex.	Taylor, Ohio
Cravens	Harris	Moss	Thayer
Crumacker	Harrison, N. Y.	Murdock	Thistlewood
Curley	Hart	Murray	Thomas
Currier	Hartman	Norris	Towner
Dalzell	Haugen	Nye	Turnbull
Daugherty	Heflin	O'Shaunessy	Tuttle
Davenport	Henry, Conn.	Page	Underwood
Davidson	Higgins	Palmer	Vare
Davis, W. Va.	Hobson	Parran	Vreeland
De Forest	Houston	Patten, N. Y.	Warburton
Dent	Howard	Patton, Pa.	Webb
Denver	Howland	Payne	Wedemeyer
Dickson, Miss.	Hughes, Ga.	Pepper	Weeks
Diffenderfer	Hughes, W. Va.	Pickett	Whitacre
Dixon, Ind.	Humphrey, Wash.	Plumley	Wilson, Ill.
Dodds	Humphreys, Miss.	Porter	Wilson, N. Y.
Donohoe	Jackson	Pou	Witherspoon
Doremus	Johnson, Ky.	Pray	Wood, N. J.
Doughton	Johnson, S. C.	Prince	Woods, Iowa
Draper	Kahn	Prouty	Young, Mich.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, having under consideration the bill H. R. 26874, the Indian appropriation bill, reported that the committee, finding itself without a quorum, he had directed the roll to be called, and that upon the roll call 154 Members answered to their names, and that he therewith reported a list of the absentees.

The committee resumed its session.

Mr. DIES. Mr. Chairman, I move to amend by striking out the last word.

Mr. MANN. Mr. Chairman, I make the point of order that the motion is not in order at this time.

Mr. STEPHENS of Texas. Mr. Chairman, I move that all debate on this section be closed in five minutes.

The CHAIRMAN. What is the point of order the gentleman from Illinois [Mr. MANN] makes?

Mr. MANN. My colleague, Mr. FOWLER, had a point of order pending on the paragraph, which I understood was not yet disposed of.

The CHAIRMAN. The gentleman from Illinois [Mr. MANN] is correct. Does the gentleman from Illinois [Mr. FOWLER] insist on his point of order?

Mr. FOWLER. Mr. Chairman, I was desiring information concerning this appropriation, so that I might determine as to whether the point of order ought to be made against the paragraph. There are questions, Mr. Chairman, requiring an appropriation which is not provided for by law, and yet the appropriation ought to be made in good conscience. If that information can be had, then the party reserving the point of order can determine as to whether he ought to make it or not. I was seeking that information, Mr. Chairman, at the time when I was taken off the floor.

Mr. OLMSTED. Mr. Chairman, I ask for the regular order.

Mr. DIES. I make the point of order, Mr. Chairman, that the gentleman is not discussing the point of order.

The CHAIRMAN. The Chair will again state that the gentleman from Illinois was recognized, in conformity with an established practice in the Committee of the Whole. Having been recognized the gentleman from Illinois proceeded in the usual manner, made his inquiries, and discussed informally the replies received. All of this was in accord with established practice. At the end of five minutes his time expired. The Chair does not recall any ruling on this precise point, but in reason a Member recognized in connection with the reservation of a point of order should not have more than five minutes, save by the acquiescence of the committee. Strictly speaking, on objection made he may be required to make his point of order without proceeding for five minutes.

Mr. OLMSTED. If the Chair will permit me, just for the purpose of raising a point of order, I demand the regular order.

The CHAIRMAN. The regular order is that the gentleman from Illinois shall state his point of order, as requested by the Chair.

Mr. OLMSTED. If the Chair will permit me, I was just going to cite the law upon this point, which seems to be much misunderstood by everyone who has discussed it. The parliamentary law is that no gentleman can reserve a point of order at all, except by unanimous consent, which is either expressly given or is assumed.

The CHAIRMAN. That is in conformity with what the Chair has already stated. I have so ruled.

Mr. OLMSTED. It is often the practice to assume unanimous consent, but when objection is made and the regular order is demanded, then all debate ceases and the point of order is passed upon.

The CHAIRMAN. That is precisely what the Chair has held, and the gentleman from Illinois [Mr. FOWLER] has been informed that he must state his point of order, if he insists upon the same.

Mr. OLMSTED. I understood a little while ago when the gentleman from Texas [Mr. DIES] objected, that the Chair held that the Member reserving the point of order was entitled to five minutes of debate.

The CHAIRMAN. The Chair was careful to state that his ruling was in conformity with the conventional procedure in Committee of the Whole. Being temporarily in the chair, the present occupant would not depart from this practice, even if so disposed, which he is not.

Mr. OLMSTED. The Chair did so state. I find in Hinds' Precedents, Volume V, section 6869, the following:

A point of order may not be reserved by a Member if another Member insists on an immediate decision.

That was decided by Mr. DALZELL, who was in the chair at the time. Mr. UNDERWOOD reserved a point of order and Mr. Hepburn of Iowa objected, and after discussion the Chair [Mr. DALZELL] said:

The Chair thinks the gentleman can not reserve the point of order in the face of an objection on the part of any member of the committee. If the gentleman from Alabama [Mr. UNDERWOOD] desires to insist on his point of order and the gentleman from Iowa, Mr. Hepburn, insists that it shall not be reserved, it must be disposed of now.

The CHAIRMAN. The ruling cited is in conformity with parliamentary law, as the Chair understands it.

Mr. OLMSTED. Mr. Chairman, I withdraw my demand for the regular order, as I have no desire to cut off debate.

The CHAIRMAN. In conformity with the authority quoted, the Chair rules now, as it has ruled heretofore, that the reservation of a point of order is not a matter of right under the rules, but of general acquiescence. All proceedings under such a reservation are a form of unanimous consent. Objection having been made, the gentleman from Illinois [Mr. FOWLER] is requested to state his point of order.

Mr. FOWLER. Mr. Chairman, on page 4 of the bill there is a provision appropriating \$1,420,000 for day and industrial schools.

Mr. DIES. Mr. Chairman, I make the point of order that the gentleman is addressing himself to a paragraph that has been passed, and I make the further objection that the five minutes indicated by the Chair have elapsed.

The CHAIRMAN. The gentleman from Illinois is merely referring to a paragraph that has been read. He has been requested to state his point of order, and as the Chair understands, is now proceeding to do so.

Mr. FOWLER. That is the case, Mr. Chairman.

The paragraph under consideration provides for an appropriation of \$300,000 for the purpose of conducting experiments on Indian school farms or agency farms. It would appear, Mr. Chairman from a reading of these two sections that there is a

double appropriation. Certainly the appropriation of \$1,420,000, a portion of which is to be applied to industrial schools for the purpose of teaching the Indians farming, is for the same object as is provided for in the paragraph under discussion.

Also, Mr. Chairman, the proviso concluding that paragraph is—

That the amounts paid to matrons, farmers, and stockmen herein provided for shall not be included within the limitation on salaries and compensation of employees contained in the act of June 7, 1897.

Mr. Chairman it would seem also that there was an attempt at a double appropriation in that portion of this paragraph. Under the explanation given by the gentleman from Texas [Mr. STEPHENS], the chairman of the Committee on Indian Affairs, and by the gentleman from Oklahoma [Mr. FERRIS], I withdraw the point of order.

Mr. MONDELL. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MONDELL. At the time the gentleman from Illinois [Mr. FOWLER] reserved a point of order—as a matter of fact, before he reserved a point of order, I think—I was recognized. At any rate, I offered an amendment to this paragraph. Am I not entitled to an opportunity to discuss this paragraph?

The CHAIRMAN. The gentleman from Wyoming has not been recognized, but of course the present occupant of the chair intends to recognize him in due course. The Chair will state that the amendment referred to must have been offered while the present occupant of the chair was temporarily out of the Chamber.

Mr. MONDELL. It was certainly offered while the Chairman was in the chair.

The CHAIRMAN. As the gentleman from Wyoming will recall, the gentleman from Missouri [Mr. RUBEY] occupied the chair for some moments, and doubtless the amendment to which the gentleman refers was offered during that time.

Mr. MONDELL. Doubtless that is so.

Mr. RUBEY. Mr. Chairman, I want to state to the Chair that the gentleman from Wyoming was in fact recognized, and had sent up an amendment, when the gentleman from Illinois [Mr. FOWLER] reserved a point of order, and then the gentleman from Wyoming was taken off the floor—

Mr. MANN. And before the amendment was offered.

The CHAIRMAN. As the Chair has stated, all of this occurred during the present Chairman's temporary absence from the Chamber.

Mr. DIES. Mr. Chairman, I am glad the item I have referred to in the bill is for an appropriation to teach farming rather than to teach parliamentary law; else I should be tempted to support the substitute. [Laughter.] It provides that \$300,000 shall be appropriated for the purpose of teaching agriculture. And, Mr. Chairman, in view of the hue and cry heard all over this country with regard to the high cost of living, I think the item is deserving and ought to be appropriated.

It seems to me that if there is a science that ought to be taught in this Republic to-day it is the science of agriculture. Those who inhabit the cities of our country and who complain of the high price of potatoes ought to know that land can be had in the West at from \$5 to \$10 an acre that will produce 300 bushels of potatoes to the acre. Those who look to the new administration for a decrease in the price of beef ought to know that the best way to decrease the price of beef is to go into the farming business and raise beef cattle. Those in the great crowded cities who are making a propaganda for a decrease in the price of eggs ought to know that the only sure way to bring about a reduction in the price of that commodity is to understand the poultry business.

So, Mr. Chairman, if there is one piece of information that the people of this country ought to have in this day of false Republicanism and blind bull mooseism, it is that the cost of living can be reduced by an increase of production rather than by a ferment of political agitation. Why, sir, the old earth upon which we live stands ready to respond to the touch of the husbandman. Down in the South and out in the West lie with beckoning hospitality the untilled acres of the earth bidding the inhabitants of the teeming cities to come and raise hay and horses and eggs and beefsteak. Mr. Chairman, you will get more good results by teaching the people to raise the necessities of life than by this maudlin agitation about the high cost of living. Sir, in the community in which I live 500 gallons of sirup can be produced upon a single acre of land that can be bought for \$10 or \$15. Surely to teach the poor Indian that he can get out and go to work and reduce the high cost of living will do him more good than a dissertation upon the tariff or upon international arbitration for the purpose of determining the high cost of living.

I am sincerely glad, Mr. Chairman, that this item is in the bill, and I hope some poor Indian will read and get the benefit of it, and that instead of joining societies to break the egg market he will get him some young pullets and feed them hot mash in the morning and take care of them and harvest his eggs and learn that that is the best way to reduce the price of eggs. [Applause.]

Mr. STEPHENS of Texas. Mr. Chairman, I move that all debate on the paragraph and all amendments thereto be closed in five minutes.

Mr. MONDELL. Is it the desire of the gentleman from Texas to cut off all amendment to the paragraph and all debate?

Mr. STEPHENS of Texas. I understand that the gentleman from Wyoming has offered his amendment, and I am willing—

Mr. MONDELL. The Chair informed "the gentleman from Wyoming" that he had not offered his amendment, and he has certainly had no opportunity to discuss it, and there has been no discussion whatever of the paragraph.

The CHAIRMAN. The Chair desires to say that the gentleman from Wyoming is in error. The Chair did not state that the gentleman from Wyoming had not offered his amendment, but that the amendment was not offered while the present occupant of the chair was in the House. The gentleman from Missouri [Mr. RUBEY] stated that during his occupancy of the chair the amendment of the gentleman from Wyoming was sent to the desk.

Mr. MONDELL. I have had no opportunity to discuss it.

Mr. STEPHENS of Texas. Then I will move that the debate be limited to 10 minutes instead of 5.

The CHAIRMAN. The gentleman from Texas moves that all debate on this paragraph and amendments thereto be concluded at the expiration of 10 minutes.

The motion was agreed to.

Mr. MONDELL. Mr. Chairman, I offer my amendment.

The CHAIRMAN. Does the gentleman desire to have his amendment reported?

Mr. MONDELL. I do.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Amend, page 5, line 15, after the word "Indians," by inserting "in the growing and care of agricultural crops and."

Mr. FERRIS. Mr. Chairman, I reserve a point of order on that.

Mr. MONDELL. Mr. Chairman, I think the amendment ought to be adopted, and I hope the committee will not object to it.

Mr. FERRIS. It is subject to a point of order.

Mr. MONDELL. I had intended to offer an amendment increasing the appropriation \$100,000. I should offer that amendment now if I thought there was any hope of its being adopted, but in the present temper of the Committee of the Whole I fear there is no hope of that. But, Mr. Chairman, I will say to my friend from Illinois that this is the only appropriation carried in the Indian appropriation bill providing for the employment of farmers and matrons and other employees to instruct the Indians. The provision is unfortunate in that while the services of farmers, stockmen, and matrons are employed in instructing the Indians, there is not anything in the paragraph that authorizes any expenditure except in connection with the agency farms.

Mr. FOWLER. Will the gentleman yield?

Mr. MONDELL. In just a moment. I offer this amendment in order to make it clear that these people are to be employed—as a matter of fact they are employed—in the instruction of Indians generally. The most important part of their work is the instruction of Indians in agricultural pursuits.

It is much more important to have these people go about among the Indians and instruct them on their own farms a portion of the time than it is to have them spend all the time in experiments on the agency farms. They are so employed and yet a strict construction of this paragraph would not allow such employment. I simply want to amend the paragraph so that these people can be employed as the House contemplates that they shall be, and, as a matter of fact, they are being employed.

Mr. STEPHENS of Texas. Will the gentleman permit me to ask him a question?

Mr. MONDELL. Certainly.

Mr. STEPHENS of Texas. Does not this language cover it, in lines 21 to 24, page 5:

For the employment of practical farmers and stockmen, in addition to the agency and school farmers now employed; and to superintend farming and stock raising among the Indians.

Mr. MONDELL. I do not think so, in view of the fact that the first part of the paragraph states how the money shall be expended.

Mr. STEPHENS of Texas. But this part that I have read says, "in addition to the agency and school farmers now employed."

Mr. MONDELL. That says that farmers, in addition to farmers employed in other parts of the bill, paid for out of the tribal funds. These are in addition to that, and I do not think that the language would necessarily justify the Commissioner of Indian Affairs employing these people, and why not make it plain?

Mr. STEPHENS of Texas. I think it is as plain as language can make it. It says:

In addition to the agency and school farmers now employed; and to superintend and direct farming and stock raising among the Indians.

Mr. MONDELL. That does not control the appropriation in general, and in my opinion the Commissioner of Indian Affairs might hold, and is likely to hold, that he has no authority to use these funds for any other purpose than to conduct experiments on the farm. This is an important appropriation, and, as a matter of fact, it ought to be largely increased, and I hope that the amendment will be adopted.

Mr. FERRIS. Mr. Chairman, personally I have no serious objection to the amendment of the gentleman from Wyoming. The language, however, in line 18, beginning with the words "for the employment of suitable persons" and ending on line 24, with the figures \$300,000, certainly give them ample power to expend these moneys in aid of the individual allottees and give them ample power to go out in the field and aid individual Indians living on the allotments, showing them when to plant, when to sow, and when to reap, and when to cultivate, and all the other things that the individual Indians ought to know. I know from personal observation, from my own experience and actual contact with them, that that is the purpose for which this money is paid out, in at least that part of the country. I think it is used for this purpose everywhere.

The justifications—we have five or six pages of reasons and explanations which disclose that the money has been and will be spent as the gentleman hopes for—are all to the effect that the money is actually used to assist the individual allottee.

We have adopted precisely the language that has been carried right along. There has been no complaint of it. The Indian Commissioner advocates it and says it works well, and it is the same language that was used last year.

Mr. FOWLER. Mr. Chairman, I desire to inquire if the \$300,000 is to pay for teaching Indians farming and rotation of crops, regardless of the age of the Indians?

Mr. MONDELL. What item is the gentleman from Oklahoma giving figures upon?

Mr. FERRIS. I beg the gentleman's pardon, the figures I quoted were wrong. I will give him the correct figures. The estimate is for \$625,000. Last year we gave them \$400,000. This year we give them \$300,000. The increase they ask for was to create some new positions and to increase some salaries. The committee thought that we should not at the short session of Congress increase any salaries or create any new positions. I think there was something of this fund left over from last year.

Mr. FOWLER. Mr. Chairman, I desire to know what this \$300,000 is intended for. Is it intended for teaching Indian children how to farm or old men how to farm?

Mr. FERRIS. Both, on their individual allotments. I think I replied to the gentleman partially a while ago what it is used for. The individual farmers are employed to go out to each Indian and show him when to plant and when to reap and when to sow and how to breed stock and how to improve stock, and so forth.

Mr. FOWLER. Regardless of the age of the Indian?

Mr. FERRIS. I think irrespective of age; that is, they teach the entire families and instruct them in all these things. The old Indians that are incompetent need education along these lines on their allotments the same as the children.

Last year we appropriated sixteen and one-half millions of dollars to educate white people in agriculture. Here we have \$300,000 with which to educate the Indian people in agriculture. The language of the paragraph is just as it was last year. It works well. It should be continued. The language is that of the commissioner.

Mr. FOWLER. That provision for industrial schools I desire to inquire about. Does anybody attend them except children under 21 years of age?

Mr. FERRIS. I think not.

Mr. FOWLER. And this \$300,000 is to go further than that?

Mr. FERRIS. Yes.

Mr. FOWLER. And instruct the Indians above the age of 21 years?

Mr. FERRIS. Yes; those that live on their individual allotments. They need the help more than words can tell. However, I would always limit it to incompetent ones.

Mr. FOWLER. Is there any provision under the law giving authority for making such appropriation?

Mr. FERRIS. I think the general installation of the Indian Bureau is to instruct not alone children, but incompetent Indians, whether they be between the ages of 6 and 21 years or between the ages of 21 years and 60 years, if they need the assistance of instruction in agricultural pursuits.

Mr. FOWLER. Has this amount or a similar amount been carried by the appropriation bills in past years for the same purpose?

Mr. FERRIS. Yes; and the language is identical with that in former years. We gave a smaller amount this year than was asked for. We allowed no increase of salaries; no new positions will be created. I think the paragraph is and will be acceptable to both the department and this Congress.

The CHAIRMAN. The time of the gentleman has expired. The question is on agreeing to the amendment offered by the gentleman from Wyoming [Mr. MONDELL].

The question was taken; and on a division (demanded by Mr. MONDELL), there were—ayes 4, noes 27.

So the amendment was rejected.

Mr. MONDELL. Mr. Chairman, I move to amend by striking out the sum of \$300,000 in line 24, and inserting \$400,000.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Wyoming.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

For witness fees and other legal expenses incurred in suits instituted in behalf of or against Indians involving the title to lands allotted to them, or the right of possession of personal property held by them, and in hearings set by United States local land officers to determine the rights of Indians to public lands, \$2,000: *Provided*, That no part of this appropriation shall be used in the payment of attorney fees.

Mr. MANN. Mr. Chairman, I reserve the point of order on the paragraph.

Mr. FOSTER. Mr. Chairman, I desire to ask the chairman of the committee a question. This item provides for expenses incurred in suits instituted in behalf of or against Indians when the title is involved to lands allotted to them, and I think the bill of last year provided for the contingency of where there was some question raised respecting the title. Why is that left out? That is, the word "question" before the word "title" was left out.

Mr. STEPHENS of Texas. Mr. Chairman, a great many Indians have gone on the public domain of the United States, as they have a right to do, and have taken up lands, the same as white men, under the same rules and regulations, and so forth. If the right of those Indians is contested in the local land offices and the matter should get into the courts, this is for the purpose of determining their right or title, whatever it may be, to the lands they have located.

Mr. FOSTER. Why was that word left out?

Mr. STEPHENS of Texas. We thought it was unnecessary.

Mr. MADDEN. Mr. Chairman, this is a very complicated question, and I think we ought to have between now and tomorrow morning to properly consider it. I therefore make the point that there is no quorum present.

Mr. STEPHENS of Texas. Mr. Chairman, I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. SAUNDERS, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 26874, the Indian appropriation bill, and had come to no resolution thereon.

CHANGE OF REFERENCE.

The SPEAKER laid before the House a request for unanimous consent on the part of the Committee on Rules to be discharged from further consideration of H. Res. 757, appointing a committee to attend the unveiling of a statue of Thomas Jefferson in St. Louis, and to have the same referred to the Committee on Industrial Arts and Expositions.

The SPEAKER. Is there objection?

Mr. FOSTER. Mr. Speaker, I reserve the right to object to that.

Mr. MANN. Mr. Speaker, I shall have to ask that that go over for the present.

The SPEAKER. Objection is heard.

ADJOURNMENT.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 5 o'clock and 25 minutes p. m.) the House adjourned until to-morrow, Thursday, December 19, 1912, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1. A letter from the Secretary of the Interior, transmitting, pursuant to law, Eleventh Annual Report of the Reclamation Service (H. Doc. No. 948); to the Committee on Irrigation of Arid Lands and ordered to be printed.

2. A letter from the Secretary of the Treasury, submitting estimates of urgent deficiencies in appropriations required by the Department of Public Health Service (H. Doc. No. 1181); to the Committee on Appropriations and ordered to be printed.

3. A letter from the Secretary of State, transmitting, pursuant to law, authentic copy of a circular issued by the Nobel committee of the Norwegian Parliament furnishing information as to the distribution of the Nobel peace prize for the year 1913 (H. Doc. No. 1180); to the Committee on Foreign Affairs and ordered to be printed.

4. A letter from the Secretary of State, transmitting, pursuant to law, an authentic copy of the certificate of the final ascertainment of electors for President and Vice President appointed in the State of Kansas at the election held therein on November 5, 1912; to the Committee on Election of President, Vice President, and Representatives in Congress.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. MURRAY, from the Committee on the Public Lands, to which was referred the bill (H. R. 26812) to provide for State selection of phosphate and oil lands, reported the same with amendment, accompanied by a report (No. 1276), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. KINKAID of Nebraska: A bill (H. R. 27409) providing that the marriage of a homestead entryman to a homestead entrywoman shall not impair the rights of either to a patent; to the Committee on the Public Lands.

By Mr. LAFFERTY: A bill (H. R. 27410) limiting the hours of labor in the District of Columbia; to the Committee on the District of Columbia.

Also, a bill (H. R. 27411) to create a minimum wage commission for the District of Columbia, and to provide minimum wage schedules; to the Committee on the District of Columbia.

Also, a bill (H. R. 27412) to create a public-service commission for the District of Columbia; to the Committee on the District of Columbia.

By Mr. LOBECK (by request): A bill (H. R. 27413) for the extension of Maryland Avenue east of Fifteenth Street to M Street NE.; to the Committee on the District of Columbia.

By Mr. DYER: Resolution (H. Res. 758) providing for the appointment of a committee of Representatives to attend and represent the House of Representatives at the unveiling and dedication of a memorial statue to Thomas Jefferson at St. Louis, Mo., April 30, 1913, in commemoration of the acquisition of the Louisiana territory; to the Committee on Industrial Arts and Expositions.

By Mr. JOHNSON of Kentucky (by request of the Commissioners of the District of Columbia): Joint resolution (H. J. Res. 374) to provide for the maintenance of public order and the protection of life and property in connection with the presidential inaugural ceremonies in 1913; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. AMES: A bill (H. R. 27414) granting an increase of pension to Martha Rogers; to the Committee on Invalid Pensions.

By Mr. CLARK of Missouri: A bill (H. R. 27415) granting a pension of Louisa Squires; to the Committee on Invalid Pensions.

By Mr. CRAGO: A bill (H. R. 27416) granting an increase of pension to Allen Bollen; to the Committee on Invalid Pensions.

By Mr. DONOHUE: A bill (H. R. 27417) granting an increase of pension to Frederick Sachsenheim; to the Committee on Invalid Pensions.

By Mr. DOREMUS: A bill (H. R. 27418) granting a pension to Catharine McCricket; to the Committee on Invalid Pensions.

By Mr. FLOOD of Virginia: A bill (H. R. 27419) for the relief of the Virginia Military Institute, of Lexington, Va.; to the Committee on Claims.

By Mr. FORDNEY: A bill (H. R. 27420) granting an increase of pension to William H. Loomis; to the Committee on Invalid Pensions.

By Mr. GARRETT: A bill (H. R. 27421) granting an increase of pension to Hugh Hayes; to the Committee on Pensions.

By Mr. GILL: A bill (H. R. 27422) granting a pension to Joseph A. Lloyd; to the Committee on Pensions.

By Mr. GOEKE: A bill (H. R. 27423) granting an increase of pension to Caroline Seib; to the Committee on Invalid Pensions.

By Mr. GUERNSEY: A bill (H. R. 27424) granting an increase of pension to Herbert Wadsworth; to the Committee on Invalid Pensions.

By Mr. HART: A bill (H. R. 27425) granting a pension to William H. Adam; to the Committee on Invalid Pensions.

By Mr. HAYES: A bill (H. R. 27426) granting a pension to Gertrude M. Farrar; to the Committee on Invalid Pensions.

By Mr. KINKAID of Nebraska: A bill (H. R. 27427) granting a pension to Emily J. Walton; to the Committee on Invalid Pensions.

By Mr. LA FOLLETTE: A bill (H. R. 27428) confirming titles of Deborah A. Griffin and Mary J. Griffin, and for other purposes; to the Committee on the Public Lands.

By Mr. LITTLEPAGE: A bill (H. R. 27429) granting an increase of pension to John F. Grayum; to the Committee on Invalid Pensions.

By Mr. LLOYD: A bill (H. R. 27430) to correct the record of H. J. Stanly; to the Committee on Military Affairs.

By Mr. LONGWORTH: A bill (H. R. 27431) granting a pension to Thomas Pryor; to the Committee on Pensions.

Also, a bill (H. R. 27432) granting a pension to John McManus; to the Committee on Pensions.

Also, a bill (H. R. 27433) granting a pension to Sarah A. Shinkle; to the Committee on Pensions.

Also, a bill (H. R. 27434) granting a pension to Sarah M. Mounts; to the Committee on Invalid Pensions.

By Mr. LOUD: A bill (H. R. 27435) granting an increase of pension to Cornelius Howard; to the Committee on Invalid Pensions.

By Mr. PATTON of Pennsylvania: A bill (H. R. 27436) granting an increase of pension to Lavina Sharp; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27437) granting an increase of pension to J. Milton Carlisle; to the Committee on Invalid Pensions.

By Mr. POST: A bill (H. R. 27438) granting an increase of pension to William M. Duff; to the Committee on Invalid Pensions.

By Mr. REILLY: A bill (H. R. 27439) granting a pension to Elmie Byington; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27440) granting an increase of pension to Francis L. Lewis; to the Committee on Invalid Pensions.

Also, a bill (H. R. 27441) to correct the military record of Michael Houlihan; to the Committee on Military Affairs.

By Mr. RUSSELL: A bill (H. R. 27442) granting an increase of pension to George W. Blair; to the Committee on Invalid Pensions.

By Mr. SIMS: A bill (H. R. 27443) for the relief of the heirs of W. H. Sneed; to the Committee on War Claims.

By Mr. STEENERSON: A bill (H. R. 27444) for the relief of Arthur Brose; to the Committee on Claims.

By Mr. STEPHENS of California: A bill (H. R. 27445) granting a pension to Harry E. Low; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER (by request): Petition of a mass meeting held in Cleveland, Ohio, favoring an investigation of the present

disturbances in the mining regions of West Virginia; to the Committee on the Judiciary.

Also (by request), petition of the Woman's League, Carmel, Cal., with reference to the trial of E. G. Lewis; to the Committee on the Post Office and Post Roads.

Also (by request), memorial of Joseph J. O'Brien, member of the Franklin Institute and the National Geographic Society, relative to the failure of the Panama Canal system of elevated engineering works; to the Committee on Interstate and Foreign Commerce.

By Mr. ASHBROOK: Petition of the Ransom Dry Goods Co. and 22 other merchants of Coshocton, Ohio, favoring legislation giving the Interstate Commerce Commission further power toward controlling the express companies; to the Committee on Interstate and Foreign Commerce.

By Mr. CALDER: Petitions of the Buffalo Chamber of Commerce, Buffalo, N. Y.; J. J. Castellini, Cincinnati, Ohio; and the Merchants and Manufacturers' Association of Birmingham, Ala., favoring the passage of Senate bill 957, for the regulation of bills of lading; to the Committee on Interstate and Foreign Commerce.

By Mr. DYER: Petition of the president of the National Conservation Exposition, Knoxville, Tenn., favoring an appropriation for the erection of a Government building, etc., at the conservation exposition; to the Committee on Public Buildings and Grounds.

Also, petition of the National Society for the Promotion of Industrial Education, favoring the passage of Senate bill 3, for the promotion of industrial education; to the Committee on Agriculture.

By Mr. FITZGERALD: Petition of the Grain Dealers' National Association, favoring the passage of House bill 3010, for regulating the telegraph and telephone service; to the Committee on Interstate and Foreign Commerce.

Also, petition of the Grain Dealers' National Association, favoring the passage of Senate bill 957, for the regulations of bills of lading; to the Committee on Interstate and Foreign Commerce.

By Mr. FLOOD of Virginia: Petition of citizens of Augusta County, Va., favoring the passage of the amended Kenyon bill, preventing the shipment of liquors into dry territories; to the Committee on the Judiciary.

By Mr. FULLER: Petition of Frank Reyes and 5 other citizens of Porto Rico, favoring the enactment of legislation making the executive council of Porto Rico elective; to the Committee on Insular Affairs.

Also, petition of T. A. Wright, president of the National Conservation Exposition, favoring an appropriation for the erection of a Government building, etc., at the conservation exposition; to the Committee on Public Buildings and Grounds.

Also, petition of George M. Bridgeman, Kintland, Ind., favoring the passage of House bill 1339, giving pensions to the one-armed and one-legged veterans of the Civil War; to the Committee on Invalid Pensions.

By Mr. GARRETT: Papers to accompany bill granting an increase of pension to Hugh Hoyds; to the Committee on Pensions.

By Mr. HAMILTON of West Virginia: Petition of citizens of Parkersburg and vicinity, favoring the passage of the Kenyon-Sheppard liquor bill preventing the shipment of liquors into dry territories; to the Committee on the Judiciary.

By Mr. HAYES: Petition of Frederick J. Koster, San Francisco, Cal.; of W. E. Wretmann, San Jose, Cal.; of Albert Dickerman, Watsonville, Cal., favoring the passage of House bill 22589, making appropriation for the building of proposed diplomatic buildings; to the Committee on Foreign Affairs.

Also, petition of Woman's Christian Temperance Union, of San Francisco, Cal., favoring the passage of the Kenyon-Sheppard liquor bill preventing the shipment of liquors into dry territories; to the Committee on the Judiciary.

Also, petition of Weil Bros. & Sons, San Francisco, Cal., protesting against the passage of the amended Kenyon liquor bill (H. R. 4043) preventing the shipment of liquors into dry territories; to the Committee on the Judiciary.

Also, petition of the Junior Order United American Mechanics and the State Council of California, Junior Order United American Mechanics, favoring the passage of the Burnett immigration bill for the restriction of immigration; to the Committee on Immigration and Naturalization.

Also, petition of the State Council of Pennsylvania, Order of Independent Americans, favoring the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. KAHN: Petition of John H. Miller, of San Francisco, Cal., protesting against the passage of House bill 26277, to establish a final court of United States patent appeals; to the Committee on the Judiciary.

By Mr. LEVY: Petition of the Brooklyn League, Brooklyn, N. Y., favoring the passage of legislation relocating the pier headline in the Hudson River between Pier 1 and West Thirtieth Street; to the Committee on Rivers and Harbors.

Also, petition of the Farmers' National Congress, Chicago, Ill., protesting against any restriction of the press; to the Committee on the Post Office and Post Roads.

By Mr. LINDSAY: Petition of veterans of the Civil War of Franklin, Ohio, and Bedford Hills, N. Y., favoring the passage of House bill 1330, granting pension to limbless veterans of the Civil War; to the Committee on Invalid Pensions.

Also, petition of Ludwig Nissen & Co., New York, favoring the passage of House bill 25106, incorporating a chamber of commerce of the United States; to the Committee on the Judiciary.

By Mr. MOTT: Petition of the president of the National Conservation Exposition, favoring appropriation for the purpose of erecting a Government building at the National Conservation Exposition; to the Committee on Public Buildings and Grounds.

By Mr. REYBURN: Petition of Washington Camp, No. 533, Patriotic Order Sons of America, Philadelphia, Pa., favoring the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. REILLY: Petition of the Social Service League of Salisbury, Conn., favoring the passage of Senate bill 3, for promotion of industrial education; to the Committee on Agriculture.

Also, petition of the Federation of Jewish Farmers of America, favoring the passage of legislation establishing systems of farmers' credit unions; to the Committee on Banking and Currency.

By Mr. TILSON: Petition of the Federation of Jewish Farmers of America, favoring enactment of legislation establishing a system of farmers' credit unions; to the Committee on Banking and Currency.

By Mr. WILLIS: Papers to accompany bill (H. R. 27408) granting pension to Daniel S. Poling; to the Committee on Pensions.

SENATE.

THURSDAY, December 19, 1912.

The Chaplain, Rev. Ulysses G. B. Pierce, D. D., offered the following prayer:

Our heavenly Father, now as always we are in Thy presence, as always, so now, we borrow strength from Thee. But now, our Father, we know ourselves to be in Thy presence, now we accept the strength and the opportunities of this day as gifts from Thee, which we in turn consecrate to Thy service. And as we part for a season, do Thou watch over us and guard us from all evil. If it be Thy will, bring Thou us together again when, by Thy grace, we will again offer unto Thee the sincere gratitude of trusting and obedient hearts. Amen.

THOMAS B. CATRON, a Senator from the State of New Mexico, appeared in his seat to-day.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. CRAWFORD and by unanimous consent, the further reading was dispensed with and the Journal was approved.

ELECTORS FOR PRESIDENT AND VICE PRESIDENT.

The PRESIDENT pro tempore (Mr. GALLINGER) laid before the Senate a communication from the Secretary of State, transmitting, pursuant to law, an authentic copy of the certificate of ascertainment of the electors for President and Vice President appointed in the State of Massachusetts at the election held therein on November 5, 1912, which was ordered to be filed.

CONTINGENT EXPENSES, NAVY DEPARTMENT (S. DOC. NO. 986).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting a letter from the Secretary of the Navy submitting supplemental estimates of appropriations for inclusion in the legislative appropriation bill for the fiscal year ending June 30, 1914, under the title of "Contingent expenses, Navy Department," \$17,875, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

RECORD OF SALES OF COTTON (S. DOC. NO. 987).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of the Treasury, transmitting, in response to a resolution of April 22, 1911, the report of sales

of cotton to the Confederate States, which, with the accompanying papers, was referred to the Committee on Claims and ordered to be printed.

PROPOSED EXECUTIVE SESSION.

Mr. LODGE. I move that the Senate proceed to the consideration of executive business.

Mr. SMITH of Georgia. Mr. President—

The PRESIDENT pro tempore. The motion is not debatable. Mr. SMITH of Georgia. I suggest that there is no quorum present.

The PRESIDENT pro tempore. The Senator from Georgia makes the point of no quorum, and the roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Clark, Wyo.	La Follette	Root
Bacon	Crane	Lodge	Sanders
Bailey	Crawford	McCumber	Smith, Ga.
Borah	Culberson	Martin, Va.	Smith, Mich.
Bourne	Curtis	Martine, N. J.	Smoot
Brandeggee	du Pont	Massey	Stone
Bristow	Fletcher	Myers	Sutherland
Brown	Gallinger	Nelson	Swanson
Burnham	Gronna	Oliver	Warren
Burton	Hitchcock	Page	Wetmore
Catron	Johnston, Ala.	Penrose	Works
Chamberlain	Jones	Perkins	
Clapp	Kenyon	Polindexter	

Mr. PAGE. I am compelled again to announce the continued illness of my colleague [Mr. DILLINGHAM]. He is unable to be present.

The PRESIDENT pro tempore. Fifty Senators have answered to their names. A quorum of the Senate is present. The question is on the motion made by the Senator from Massachusetts.

Mr. BAILEY. I ask the Senator from Massachusetts to withhold his motion until I can dispose of a matter of morning business.

The PRESIDENT pro tempore. Does the Senator from Massachusetts withhold his motion?

Mr. LODGE. I will withhold it for the Senator from Texas, but I can not do it again.

THE INITIATIVE AND REFERENDUM.

Mr. BAILEY. I offer the following resolution, which I will ask the Secretary to read.

The resolution (S. Res. 413) was read, as follows:

Resolved, That such a system of direct legislation as the initiative and referendum would establish is in conflict with the representative principle on which this Republic was founded, and would, if adopted, inevitably work a radical change in the character and structure of our Government.

Mr. BAILEY. Mr. President, I ask that the resolution remain on the table, because at the Senate's convenience I desire to speak to it; and unless something occurs to prevent it I shall ask the Senate to hear me after the morning business on the 2d day of January.

The PRESIDENT pro tempore. The resolution will be printed and lie on the table, subject to the call of the Senator from Texas.

EXECUTIVE SESSION.

Mr. LODGE. I renew my motion that the Senate proceed to the consideration of executive business.

Mr. SMITH of Georgia. On that I ask for the yeas and nays. The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. CLAPP (when his name was called). Owing to the absence of my pair and not knowing how he would vote, I withhold my vote.

The PRESIDENT pro tempore (when Mr. GALLINGER's name was called). The Chair is paired with the Senator from Arkansas [Mr. DAVIS]. He transfers that pair to the Senator from South Dakota [Mr. GAMBLE] and votes "yea."

Mr. PERKINS (when his name was called). I have a general pair with the junior Senator from North Carolina [Mr. OVERMAN]. He being absent, I withhold my vote.

Mr. SMITH of South Carolina (when his name was called). I am paired with the Senator from Delaware [Mr. RICHARDSON] and withhold my vote. If he were here, I would vote "yea."

The roll call was concluded.

Mr. CURTIS. I wish to announce the pair of the Senator from Kentucky [Mr. BRADLEY] with the Senator from Indiana [Mr. KERN]; of the Senator from New Jersey [Mr. BRIGGS] with the Senator from West Virginia [Mr. WATSON]; of the Senator from Rhode Island [Mr. LIPPITT] with the Senator from Tennessee [Mr. LEA]; of the Senator from Wisconsin [Mr. STEPHENSON] with the Senator from Indiana [Mr. SHIVELY]; of the Senator from Delaware [Mr. RICHARDSON] with the